

A Study on Price Reduction under CISG and Issues

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I. Introduction

The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG or Convention) became effective on January 1, 1988.¹⁾ Approximately eighteen years later, the CISG is currently the law in eight - four countries.²⁾ Constituting the

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1) United Nations Convention on Contracts for the International Sale of Goods, U.N. Doc. A/CONF.97/18 (1980), reprinted in United Nations Conference for the International Sale of Goods: Official Records at 178-90, U.N. Doc. A/CONF.97/19 (1981), reprinted in S. Treaty Doc. No. 98-9, 98th Cong., 1st Sess. and 19 Int'l Legal Materials 668-99 (1980), 52 Fed. Reg. 6262 (1987), 5 U.S.C.A. App. (Supp. 1987), hereinafter CISG or Convention.

2) As of 29 December 2015, UNCITRAL reports that 84 States have adopted the CISG,

domestic law of each Contracting State, the CISG automatically governs any contract involving parties that maintain their relevant places of business in different Contracting States.³⁾ CISG can also automatically govern contracts involving only one signatory to the CISG, if that one party (i) has a relevant place of business in a Contracting State and (ii) that Contracting State's domestic law is applicable. Interestingly, the CISG can also apply to transactions between parties that do not conduct their relevant business in a Contracting State. Thus, the CISG essentially governs all contracts for the sale of goods between parties from Contracting States, unless the parties have indicated that they do not want the CISG to govern.

The CISG has gained tremendous political and economic significance because it automatically governs the sale of goods between Korea and rest of major trading partners internationally. As to precedent Korean research works ; Shim , Chong Seok(2009) pointed out general remedies arising from non-performance under international sale of goods. Further Ha, Kang Hun(2014) studied seller's duty to mitigate the buyer's damage in international sale of goods. Min, Joo Hee(2014) conducted analysis on seller's liability for defects in the title of goods under SGA. This study compares to those studies by raising problems that have arisen with respect to interpreting and applying price reduction, Also this study suggest strategies of price cut issues illustrating several court cases.

II. Nature of Remedy of Price Reduction

1. Contract and Remedy

When a buyer imports goods from a seller, both parties enter into a contract. A contract may be defined as an agreement between two or more parties that is intended to be legally binding. In order for a term to be binding it must clearly be part of the contract and be legal. Failure to comply with the terms of the contract is referred to

<<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>>.

3) If such parties were to elect for the CISG to apply, the CISG would operate similar to terms and conditions incorporated in the contract, <<http://cisgw3.law.pace.edu/cisg/cisgintro.html>>.

as a breach of contract, and the party committing the breach normally has to correct it in some way.

A party transferring or selling the goods must have the right to do so and the goods must be of a satisfactory quality. Quality is a general term, which covers a number of matters including: fitness for all the purposes for which goods of that kind are usually supplied, appearance and finish, freedom from minor defects, safety, durability.

Also goods are required to be fit for a specified purpose such as matching the description, sample or model. When a buyer relies on a description, sample or display model the goods supplied must conform to it. If the goods do not conform, buyer's offence may be effected.

When there is a breach of contract, and the buyer chooses not to exercise his right to reject goods, he will be entitled in the first instance to claim a repair or replacement. Where a repair or replacement is claimed, the seller must do this at no cost to the buyer, within a reasonable time and without causing significant inconvenience.⁴⁾

Once the buyer has chosen a remedy, they must give the seller a reasonable time to provide that remedy.⁵⁾ In either case where repair or replacement fail, the buyer is entitled to further repairs or replacements or they can claim a price reduction or the right to reject.

The general rules of a contract required from either the seller or the buyer is to comply with their obligations. Therefore, the seller is expected to do his obligation and the buyer is also expected to oblige, but sometimes one party may breach the contract in many ways. For example, the seller may deliver the goods to the buyer late or the delivered goods fail to conform to the standards which are set by the contract between them. However, in some cases the buyer may breach the contract by not paying the price of the goods. When the breach of contract happens, the injured party may claim for remedies or damages which are available to both the buyer and the seller.

4) CISG Art 46 (3) : If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under Art 39 or within a reasonable time thereafter.

5) CISG Art 49 reads : (1) The buyer may declare the contract avoided:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of Art 47 or declares that he will not deliver within the period so fixed.

2. Buyer's Remedy for Unconforming Goods

A buyer involved in a contract for the sale of goods could take remedies if a seller fails to perform something which he promised to do as part of the contract. In other words, the seller's basic duty in a sale of goods contract is to deliver the goods in accordance with the terms of the contract and if the seller fails to deliver in the manner which was required under the contract then he will be in breach of the contract. The seller is also be in breach of the contract even if he delivers the goods on time but the delivered goods do not comply with the terms of the contract.

If the parties have not chosen remedies in their contractual relationship, the law which governs the contract will apply in this case. It appears that the remedies which are available for the buyer for breach of contract are different from country to country.⁶⁾ And it is found that the buyer under the CISG has many remedies such as specific performance, additional time and price reduction.⁷⁾ It could be said that this difference for the buyer's remedies exist due to the CISG being designed to consider the characteristics of the international trade such as the long distance⁸⁾ between the parties. And therefore both civil and common legal communities can benefit from a detailed exploration of the CISG remedy of price reduction.⁹⁾

3. Use of Price Reduction on Buyer Side

A buyer can reduce the price under Art. 50 "if the goods do not conform with the contract." This means that price reduction plays an especially important role because it allows the buyer to reduce the price before he pays the invoice¹⁰⁾ regardless of whether

6) Korea Civil Law also set price reduction right at Civil Law Art 572 (1) but Common Laws little.

7) Under the SGA 1979 these remedies are very limited such as termination and damages. <http://www.lawteacher.net/free-law-essays/commercial-law/buyer-remedies-of-a-contract-commercial-law-essay>.

8) long distance means an increased cost of transportation.

9) Erika Sondahl, Understanding the Remedy of Price Reduction - A Means to Fostering a More Uniform Application of the United Nations Convention on Contracts for the International Sale of Goods, 7 *Vindobona Journal of International Commercial Law and Arbitration*, pp. 255~276, 2003.

10) The CISG Art 50 price reduction remedy is available regardless of whether or not the price has already been paid.

the seller is liable for the non-conformity. In other words, price reduction gives a most favour to the buyer in case the seller has excuse for his non-conformity¹¹⁾ backed by CISG Art 79¹²⁾ which release the seller from damage claims. Generally, the question of whether the goods conform with the contract can be determined in reference to Art. 35, namely: whether the goods are of the quantity, quality and description required by the contract, and if they are contained or packaged in the manner required by the contract; and meet the four specific requirements set out in Art. 35(2)(a) to (d).¹³⁾

It is also important that assertion of a price reduction will not limit the buyer from seeking damages, provided the buyer respects the condition of Art 39. In other words, the buyer may exercise combined price reduction under Art 50 with an action for damages.

4. Base for Calculation

Under Art. 50, the amount by which the buyer may reduce the price is a proportional reduction of the price of goods¹⁴⁾: in the same proportion as the value that the goods

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- 11) "Art 50 has its principal significance when the buyer accepts defective goods under circumstances in which the seller is not liable for 'damages.' John O. Honnold, Uniform Law for International Sales under the 1980 United Nations Convention, ix (3d ed. 1999).
- 12) CISG Art 79 provides that a party is excused from liability for 'damages' when his failure to perform is 'due to an impediment beyond his control.
- 13) Art 35 reads 1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:
- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.
- 14) "The proportionate price reduction (*actio quanti minoris*) is a remedy well-known in Civilian, but not in Common law systems. The proportionate price reduction constitutes an alternative to avoidance for non-conformity under Art 49, though it is also available in cases where the buyer would not be entitled to avoid" Joseph Lookofsky, International Encyclopaedia of Laws -

actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.¹⁵⁾

In calculating that proportional reduction under the present Art. 50, the value of the conforming goods is not just treated as equal to the price under the contract, because the current value at the time of delivery is more likely different from time of contact, and the current value at the conclusion of the contract tends to be somewhat technical in terms of calculation.

The decisive time for the calculation of the price difference between proper goods and non-conforming ones is not the time of the conclusion of the contract but the time of the delivery of the goods. And the time of delivery is to be interpreted on the basis of the contract and Art. 31.¹⁶⁾

In summary, 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.¹⁷⁾

Contracts, Suppl. 29 (December 2000) pp. 1~192.

15) As for the time as to which to establish the value of the goods, what is decisive is the time of delivery and not the time of the conclusion of the contract, as laid down in Art. 46 ULIS or in 472(1) BGB, both for the value of the non-conforming goods and for conforming ones. The Convention makes it clear: at the time of the delivery bears to the value that conforming goods would have had at that time. <https://www.jus.uio.no>

16) Art 31 reads : If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract related to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;
- (c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

17) <http://www.cisg.law.pace.edu/cisg/text/e-text-50.html>.

III. Court Cases

1. Russian Case No. 54/1999 of 24 January 2000 ¹⁸⁾

1) Fact Summary

The action was brought by an American firm, the buyer, against a Russian company, the seller, in connection with a contract concluded by the parties in January 1998. The contract involved the delivery of two goods on FCA (free carrier) basis, in accordance with Incoterms under the contract. The seller was obliged to check the quality of the goods before dispatch and submit confirmatory documents with the cargo to the buyer. According to the statement by the seller, the check on the first goods was conducted, for technical reasons, in the country of destination. The check revealed material deviations from the contract requirements, as a result of which the first goods reached the end user substantially reduced in value. On the first goods the buyer sought a price reduction equal to the sum that remained unpaid by the end users. On the second goods, the buyer sought damages for lost profit, on the grounds that the delivery of inferior goods under the first goods had damaged its reputation on the market, with a consequent substantial slowdown in sales. The seller asserted that, firstly, the buyer had not proven that the goods were defective, and, second, that the buyer's claim had been lodged after the deadline established by the contract.

2) Analysis

The tribunal found that the buyer's inspection of the first goods had used methods not provided for by the contract. With regard to the breach by the buyer of the agreed claim period, the tribunal ruled that the buyer, by sending the seller a letter with an inquiry about replacing the defective goods, had acted in conformity with the provisions of article 46 CISG.¹⁹⁾ The tribunal did not, however, agree with the buyer's contention

18) The award was given by Arbitration Tribunal of Russian Federation Chamber of Commerce and Industry.

19) Art 46 reads :

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the

that the seller had wrongfully failed to indicate in the documentation accompanying the shipment the existence of defects, since it was impossible to draw such a conclusion from the nature and extent of the defects and the evaluation made by each side. The tribunal found that the inspection of the goods in the loading port had been economically and technically inadequate. The postponement of the quality check until its arrival in the port of destination was, therefore, considered reasonable.

Furthermore, the tribunal noted that the buyer could not base its claim on articles 75 CISG²⁰), which applied to situations where a contract was avoided, whereas the buyer had exercised its right under article 50 CISG to claim a price reduction. The buyer could not, therefore, also claim compensation for loss and it had made no claim for including customs costs in the calculation of the price reduction.

3) Comments

This case draws attention that even if a buyer have a chance to reduce the price, the buyer shall take the appropriate steps to mitigate the loss of goods delivered, and the loss resulting from such failures are not justified accordingly.

2. Case law on UNCITRAL texts (CLOUT) No. 432²¹⁾

1) Fact Summary

The dispute arose from a contract between an Italian seller (plaintiff) and a German buyer (defendant) for the purchase of granite stone. After a first delivery turned out to be faulty, the seller offered a free delivery of substitute goods. After this second

buyer may: (a) exercise the rights provided in articles 46 to 52; (b) claim damages as provided in articles 74 to 77.

(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 Tribunal when the buyer resorts to a remedy for breach of contract

20) Article 75 reads : If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

21) <http://www.cisg.law.pace.edu/cisg/wais/db/cases2/001012g1.html>.

delivery, however, the buyer still did not pay the full contract price. When the seller sued, the buyer claimed that the second delivery had been faulty as well and alleged that after it had made a complaint in this respect, the seller had agreed upon a reduction of the price. Later on, however, the buyer declared an avoidance of the sales contract or alternatively at least a reduction of the purchase price. The seller argued that a complaint in respect of the asserted defects of the substitute delivery had never been made. The seller also denied any agreement on a reduction of price.

2) Analysis

The court found in favour of the seller. It held there was no agreement on a reduction of price because the buyer was unable to prove that such an agreement had been reached. A reduction of the price pursuant to articles 50 and 51(1) CISG was not granted because of the inability of the buyer to prove that it had given notice of the asserted defects according to article 39(1) CISG.

Concerning the alleged avoidance of the contract by the buyer under articles 49(1)(a), 49(2)(b)(ii) CISG, the court did not rule out that there might have been a fundamental breach of contract. However, it observed that the buyer had failed to set an additional period of time for performance according to article 47(1) CISG. Therefore, the court concluded that avoidance of the contract was impossible.

3) Comment

This case shows that a buyer could not rely on a right to suspend performance according to article 71 CISG.²²⁾ To enable this, buyer is required to give immediate

22) Article 71 reads :

- (1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of: (a) a serious deficiency in his ability to perform or in his creditworthiness; or
(b) his conduct in preparing to perform or in performing the contract.
- (2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.
- (3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

notice regarding avoidance of contract or compensation to the seller. The mere counter action by the buyer could not fulfill the requirement of notice of suspension and right for price reduction.

3. Netherlands Arbitration Institute, Case No. 2319²³⁾

1) Fact Summary

The claimants in this case, sellers, Dutch companies, were active in the exploration of offshore gas fields in The Netherlands' continental shelf. The buyer, an English company, was a major international player in the field of exploration, production and refining of crude oil and distribution of oil products and gas. In 1993 and 1994, the parties concluded twelve contracts concerning condensate, a crude oil mix named as 'Rijn Blend'. On June 11, 1998, the buyer informed the sellers that it would not accept the next delivery of Rijn Blend, because, due to high levels of mercury therein, further processing or sales were impossible. On June 16, 1998, the buyer notified the sellers that it would suspend taking delivery until a solution for the mercury problems was found. No solution was found however; therefore, the buyer let some contracts expire and terminated the other contracts. In the meanwhile, the sellers sold the Rijn Blend that was not taken by the buyer to third parties at an alleged loss compared to the contract price.

In May 2000, the sellers initiated arbitration proceedings against the buyer at the NAI (Netherlands Arbitration Institute). The sellers argued that the Rijn Blend, even with increased levels of mercury, was in conformity with the contract since no specific quality requirements were agreed upon. Thus the buyer breached the contract in not taking delivery and suspending its contractual obligations. The sellers claimed damages. The buyer on the other hand declined any liability and stated that the goods were not in conformity with the contract because the sellers knew or should have known that, since Rijn Blend is used in the refinery business, Rijn Blend with such high levels of mercury might cause damages downstream. Because of this non-conformity, the buyer maintained that it was entitled to refuse delivery and suspend its obligations under the contracts.

23) <http://www.cisg.law.pace.edu/cisg/wais/db/cases2/021015n1.html>.

2) Analysis

Because the contract contained no quality specifications, the Tribunal found that the issue of conformity should be decided based on Article 35 (2)(a) CISG, which requires that the goods are fit for the purposes for which goods of the same description would ordinarily be used.

Interpretations based on the merchantable and average quality norms led to different conclusions in this case. Therefore, the Tribunal decided that Article 35 (2)(a) CISG should be interpreted according to the reasonable quality criterion. The Tribunal found that the reasonable quality test met the terms of Article 7 (1) CISG²⁴⁾ since it did not rely immediately on domestic notions. It also was consistent with Article 7 (2) CISG,²⁵⁾ allowing general principles of CISG as gap fillers. The reasonable quality standard furthermore was compatible with the preparatory works of CISG.

The Tribunal decided that the Rijn Blend did not meet the reasonable quality norm, because the price the parties agreed upon would not be paid for condensate with increased levels of mercury.

3) Comment

This case is that the interpretation of whether the goods are conformed to the contract as being fit for the purposes is based on goods which are ordinarily be used. And timely notice of non-conformity is important for later possibility of refusal and suspension of delivery.

24) Article 7 (1) reads : In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

25) Article 7 (2) reads : Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

IV. Issues on Price Reduction

1. Separate Declaration of Price Reduction

In relation to the Art 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. 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 Art 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.²⁶⁾

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.²⁷⁾

2. Price Deduction - Claim or Defence

Classifying price reduction as a defense or claim is of great importance in understanding how to properly apply and interpret Art 50.²⁸⁾

A small number refer to price reduction as a defense. It is said that treating price reduction as a defense is seen to be more practical. This is because the CISG appears not be used offensively by the buyer and it is likely used as a counterclaim or a defense to an action by the seller for the purchase price. Such a result is in some respects not surprising. Where there is no dispute between the parties as to the amount of reduction, the matter would not come to court and the remedy would act in its intended manner:

26) Chang-Sop Shin, Declaration of Price Reduction Under the CISG Article 50, 25 *Journal of Law and Commerce*, 2005-06, pp. 349~352.

27) 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].

28) Erika Sondahl, *supra* note 9.

as a self-help remedy of the buyer. In this way, the buyer would like to avoid the costs and uncertainty of litigation.²⁹⁾

While no clear resolution exists to resolve the debate over whether price reduction is a defense or a claim, it is clear that as a general matter, many studies would like to classify price reduction as a claim.

Other point is that a price reduction should be proactive in nature but buyer can be barred from seeking a remedy entitled to him when he had signed a waiver of defense agreement. Signing a waiver of defense agreement means that the buyer is relinquished all of rights to seek action, then seller could escape the responsibility of delivering conforming goods by merely having their customers sign waiver of defense agreements.³⁰⁾

3. Does price Reduction apply to quantities, services, or third parties?

According to CISG Art 35(1), seller is to deliver goods which are of the quantity, quality, and description required by the contract. Some commentators support application of price reduction “where performance is quantitatively defective,”³¹⁾ some commentators suggest that price reduction should not be available for non-conformities pertaining to quantities.³²⁾ Even though decisions have stated that non-conformities include both quantity and quality,³³⁾ it still remains to be seen whether price reduction applies to defects that are solely quantitative.

In fact, no distinction is drawn in Art 50 between different types of non-conformity. Furthermore, decisions have stated that non-conformities include both quantity and quality, although it still remains to be seen whether price reduction applies to defects that are solely quantitative. According to Art. 35(1) a failure of quantity constitutes a “non-conformity”, and that reduction of price is therefore available when the goods are

29) Ibid.

30) Ibid.

31) Eric E. Bergsten & Anthony J. Miller, “The Remedy of Reduction of Price”, *27 American Journal of Comparative Law*, 1979, pp. 265~267

32) John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*, 3rd ed. *Kluwer Law International*, 1999, pp. 335~342 (failing to specifically mention whether price reduction applies to quantity defects and stating that the application of price reduction should not be stretched to far beyond the field of non-conforming goods).

33) Oberlandesgericht [Appellate Court] Koblenz, Germany, 31 January 1997 <<http://cisgw3.law.pace.edu/cases/970132g1.html>> (stating that lack of conformity includes lack of both quantity and quality).

insufficient in either quality or quantity.

Whether price reduction applies to services is another instance where room exists for further interpretation. The availability of a price reduction claim for non-conforming services primarily involves a scope issue since the CISG pertains to the sale of goods, not services. However, to the extent that the contract fits within the scope of the CISG, there should be no question as to whether price reduction should apply to services. While CISG Art 1³⁴⁾ defines the scope of the CISG to include “contracts of sale of goods,” support exists for including services when such services are being provided in conjunction with goods. If a larger proportion of goods to services are contained in a contract, it is likely that price reduction will be applicable.

4. Price for Comparing

Geographical market value that should be considered when determining the value of the goods. Although the CISG clearly specifies that the goods should be valued when they are delivered, no mention is made with respect to what country’s market shall control the valuation of the goods.

As for the place to measure the market value in calculating the reduction, the prevailing value would be that of the residence of the buyer or the place of delivery might be a better reference point. However, the CISG leaves open where the value of the conforming and/or non-conforming goods will be assessed. CISG does not stipulate at which place or market the prices have to be compared; however, in consideration of the close relationship between date and place of delivery, this place would be decisive.³⁵⁾ But in most cases buyers may consider the place of destination in his favour.³⁶⁾

Regardless of the vagueness regarding the reference place, what is certain is that the amount of price reduction has to be calculated in a proportionate way. The contract price has to be reduced in proportion of the value of the delivered goods to the value conforming goods would have.³⁷⁾

34) Article 7(1) reads : This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

35) Enderlein & Dietrich Maskow, *International Sales Law: United Nations Convention on Contracts for the International Sale of Goods*, Oceana Publication (1992), p. 304.

36) <http://www.cisg.law.pace.edu/cisg/biblio/enderlein1.html>.

5. Limited by the Cure

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 48³⁸⁾ or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

This means that the buyer has no right to reduction if the seller cures the defective goods. Insofar as this is done according to Art. 37,³⁹⁾ before the time of delivery, this should be quite natural. And if the seller remedies a defect under Art. 48 5), there will be no need for a price reduction because equivalence will be re-established. What is of significance is that the right to price reduction will be lost when the buyer refuses to have the defect cured by the seller. It is of no importance here why the buyer refuses the cure, e.g. because of unreasonable inconvenience. In this case, the buyer might retain the right to claim damages taking account of the probable mitigation of losses under Art. 77.

37) http://www.uncitral.org/english/clout/digest_cisg_e.htm.

38) Article 48 CISG reads :

- (1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.
- (2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
- (3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.
- (4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

39) Art. 37 CISG reads: If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense.

V. Conclusion

Price reduction sometimes give an advantage in terms of defence strategy in case market price has substantially decreased for conforming goods or unconforming goods decreased between the time of contracting and delivery.

Buyer can get a benefit in case a price in the market. if there were a reduction in market price from the time of contracting. This means that the buyer would most likely reject the goods, since it could buy right replacement goods at less than the contract price in the open market. Conversely, in any event, where the price increases, the buyer would seek damages since the difference in value between what was contracted and what was received according to the difference calculated under Art. 50.

However price reduction leaves and brings following several issues :

First, whether price-reduction under Art. 50 applies to other types of non-performance such as delay, delivery at the wrong place, and the like.

Second, price reduction presupposes that the buyer has given notice of the lack of conformity of the goods. Without due notice, the buyer might not be allowed to rely on the lack of conformity and lose all remedies.

Third, if the goods do not conform to the contract, the buyer can reduce the price corresponding to the lower value of the goods. However, if the seller remedies the non-conformity or the buyer refuses to accept the remedy, buyer is not entitled to reduce the price. In this case, the buyer may only think about claiming damages under Art. 45

Fourth, there have been also problems in determining the time and place for measuring the value of non-conforming and conforming goods. CISG clears that the decisive time for the calculation of the price difference between proper goods and non-conforming ones is not the time of the conclusion of the contract but the time of the delivery of the goods. However, CISG is silent about which place or market the prices have to be compared.

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ABSTRACT

A Study on Price Reduction under CISG and Issues

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Price reduction under CISG Art. 50 is advantageous to a buyer because it is a self-help remedy to the buyer. It is the buyer that has the option and the power to reduce the price paid or to be paid to the seller. Price reduction is indispensable in such cases where the seller is relieved of liability. In such cases the remedy of price reduction is the only one giving the buyer monetary relief.

Another special role of price reduction is to determine how much the buyer owes the seller for non-conforming goods when special circumstances relieve the seller of liability for damages. In any event, price reduction has been designed both as an alternative to damages and for cases where the non-performing party is excused from liability for damages. The price reduction remedy however leaves several issues for clarification and application in several respects.

Keywords : Buyer's Remedy, Price Reduction, CISG