



**United Nations Commission
on International Trade Law**

**UNCITRAL Digest of case law on the United Nations
Convention on the International Sale of Goods***

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Overview and applications

1. In certain circumstances, the CISG imposes upon sellers (article 85) and buyers (article 86) an obligation to take reasonable steps to preserve goods that are within the party's possession or control, along with a right to retain the goods until the party is reimbursed its expenses of preservation. Article 87 specifies one means by which a party can fulfil its obligation to preserve goods: it can store the goods in a third party's warehouse "at the expense of the other party provided that the expense incurred is not unreasonable".

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

2. Only a small number of decisions, generally involving a party's claim for reimbursement of the costs of storing goods in a warehouse, have involved article 87. Thus where a buyer refused to take delivery of trucks and the seller deposited them in a warehouse (before eventually reselling them to another buyer), an arbitral tribunal found that the seller's actions were justified under articles 85 and 87 and, after determining that the warehousing costs were reasonable, it awarded seller compensation for those expenses.¹ Similarly, article 87 has been cited as part of the basis for a buyer's recovery of the cost of storing delivered goods in a warehouse after the buyer justifiably avoided the contract.² In another decision, an arbitral tribunal held a breaching buyer liable for the seller's costs of storing the goods in a warehouse, but the tribunal denied the seller's claim for damage to the goods resulting from prolonged storage because risk of loss had not passed to the buyer under applicable rules.³ Where the buyer properly avoided the contract, it was found that the prerequisites for the seller to claim, under articles 85 and 87, reimbursement for its expenses of warehousing the goods were not met because the buyer did not breach its obligations; the seller's claim was therefore denied.⁴ An avoiding buyer's costs of warehousing rejected air conditioner compressors have also been treated as damages recoverable under article 74 without citation of article 87.⁵ And where a buyer sought interim relief to prevent re-sale of a key component of industrial machinery that the seller had retained after the buyer failed to make full payment, the court held that the seller could move the component to a warehouse but, because the proceeding involved interim remedies, the seller could not rely on article 87 and would itself have to advance the expenses of depositing the component in the warehouse.⁶

¹ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 25 April 1995, Unilex.

² CLOUT case No. 304 [Arbitration—International Chamber of Commerce No. 7531 1994] (see full text of the decision).

³ CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993] (see full text of the decision).

⁴ CLOUT case No. 293 [Arbitration—Schiedsgericht der Hamburger freundschaftlichen Arbitrage, 29 December 1998] (see full text of the decision).

⁵ CLOUT case No. 85 [Federal District Court, Northern District of New York, United States, 9 September 1994] (characterizing recovery of preservation costs as “consequential damages” recoverable under article 74) (see full text of the decision), affirmed in relevant part in CLOUT case No. 138 [Federal Court of Appeals for the Second Circuit, United States, 6 December 1993, 3 March 1995] (characterizing recovery of preservation costs as “incidental damages”) (see full text of the decision).

⁶ CLOUT case No. 96 and No. 200 [Tribunal Cantonal Vaud, Switzerland, 17 May 1994] (both abstracts dealing with the same case) (see full text of the decision).