



**United Nations Commission
on International Trade Law**

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

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.

* 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.

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 that 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", and the buyer then 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. 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.² On the other hand, an avoiding buyer's costs of storing rejected air conditioner compressors have been treated as damages recoverable under article 74 without citation of article 86.³ 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.⁴ 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.⁵

¹ As was the case with the seller's article 85 obligation to preserve goods, furthermore, 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.

² CLOUT case No. 304 [Arbitration—International Chamber of Commerce No. 7531 1994].

³ 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"), *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).

⁴ China International Economic and Trade Arbitration Commission (CIETAC), People's Republic of China, 6 June 1991, Unilex.

⁵ CLOUT case No. 155 [Cour de Cassation, France, 4 January 1995] (see full text of the decision).