

THE BUYER'S PERFORMANCE UNDER THE CISG: ARTICLES
53-60 TRENDS IN THE DECISIONS

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The obligations of the buyer under the Convention on Contracts for the International Sale of Goods (CISG) can be succinctly summarized as the obligations to take the goods and to pay for the goods. In most respects, any further qualification is a mere footnote or particularization of these two obligations.

The buyer's obligations are set out in Articles 53 through 60 of the CISG. In this paper, I discuss the trends in the cases that have developed in the interpretation of these articles.

ARTICLE 53: THE BUYER'S OBLIGATION TO TAKE DELIVERY OF THE GOODS
AND PAY THE CONTRACT PRICE FOR THE GOODS

Article 53 describes the general responsibilities of the buyer in an international sales transaction. This section recognizes the primacy of the contract in defining the parties' obligations, and this article applies absent a contractual agreement between the parties to the contrary. Under the CISG, as with any law that governs the sale of goods, the primary obligations of the buyer are those obligations that arise from the contract with other obligations that arise from the underlying substantive law.¹

Under Article 53 of the Convention, these obligations primarily include taking delivery of the goods and paying the contract price.² Since the specifics of these obligations are dealt with in other articles, Article 53 has created no problems for the courts. Accordingly, the reported decisions have generally only mentioned the obligations set forth in Article 53 in passing, and have only stated the obvious point that the buyer does in fact have the obligation to pay the price for the goods.

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1. This, of course, presupposes the existence of a binding agreement.

2. Article 53 provides: "The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention." United Nations Convention on Contracts for the International Sale of Goods art. 53, U.N. Doc. A/CONF.97/18, Annex 1 (Apr. 11, 1980) [hereinafter CISG].

ARTICLE 54: BUYER'S OBLIGATION TO ENSURE THE CONTRACT PRICE FOR
THE GOODS IS PAID

Article 54³ specifies that the buyer's obligation to pay the contract price extends beyond the abstraction of owing the money. The obligation also includes whatever steps and costs that are necessary to ensure that the payment is actually made.⁴ Absent a contrary agreement, "the buyer must bear the costs for measures necessary to enable him to pay the price."⁵ Thus, as the cases have pointed out, any costs associated to effect payment are rightfully borne by the buyer.⁶ The seller may consider the buyer's failure to follow "such formalities" as either an anticipatory breach⁷ or as a breach of contract.⁸

The cases have made a number of obvious conclusions, such as the failure to procure a letter of credit as required under the agreement qualifies as a breach of Article 54.⁹ Several cases have also addressed the question implicit in Article 54 as to which currency payment is to be used. The cases have

3. CISG Article 54 provides: "The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made."

4. CLOUT Case No. 142 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 17 Oct. 1995] ("under Article 54 CISG, the buyer's obligation to pay the price of the goods included taking such measures and complying with such formalities as might be required to enable payment to be made"). Of course, most decisions involving this article are concerning payment, usually the currency required. *See, e.g.*, CLOUT Case No. 80 [Kammergericht Berlin, Germany, 24 Jan. 1994] (currency is that of place of payment, when doubt exists); CLOUT Case No. 281 [Oberlandesgericht Koblenz, Germany, 17 Sept. 1993] (currency determined by the seller's place of business); CLOUT Case No. 52 [Municipal Court Budapest, Hungary, 24 Mar. 1992].

5. For example, if a government charged a tariff on the export of money, the buyer would be responsible for that extra cost (absent contrary agreement) as part of the payment of the price.

6. Landgericht Duisburg, Germany, 17 Apr. 1996, *published in* RECHT DER INTERNATIONALEN WIRTSCHAFT 774 (1996).

7. CISG arts. 71-73 (remedies for anticipatory breach).

8. *See* CISG arts. 74-77 (damages for breach of contract). For example, if the contract requires the buyer to obtain a letter of credit by a particular date, and the buyer fails to do so, then, the seller may resort to remedies for anticipatory breach or damages for breach of contract.

9. Supreme Court of Queensland, Australia, 17 Nov. 2000; CLOUT Case No. 176 [Supreme Court, Austria, 2 Feb. 1995] (in this case, however, the buyer was not considered to have been in breach of the buyer's obligations since the seller had omitted to indicate the port of embarkation when that was in fact necessary, under the contract, for establishing the letter of credit); CLOUT Case No. 104 [Court of Arbitration of the International Chamber of Commerce, Case No. 7197, 1992]. Similarly, it was decided in arbitration that a buyer who had not paid the price for equipment delivered was liable if the buyer had merely given instructions to its bank to make a transfer to the seller but had done nothing to ensure that the payment could actually be made in convertible currency. *See* CLOUT Case No. 142 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, 17 Oct. 1995].

generally come to the proper conclusion that the currency of payment, absent a specific agreement otherwise, should be made in the currency where the seller has his business or the place where the payment is to be made.¹⁰ One case, however, came to the inexplicable conclusion that the currency of payment should be determined by the law that would govern the agreement absent the Convention.¹¹

ARTICLE 55: WHEN THE PRICE IS NOT SET BY THE AGREEMENT

Article 55¹² is a gap-filling provision for an omitted or indefinite price term for a validly concluded contract.¹³ The application of this article presupposes that the offer did not otherwise fail for indefiniteness due to the absence of the price term. In the absence of an express or implicit price term, the parties are presumed to have agreed to the price generally charged at the time of the conclusion of the contract for goods sold under comparable circumstances in the trade concerned.

The decisions have consistently found correctly that Article 55 is subject to the intention of the parties, and therefore Article 55 does not provide for the establishment of a price if it has already been determined¹⁴ or made determinable by the parties.¹⁵ Article 55 is also inapplicable if the parties have made the contract subject to a subsequent agreement on the price.¹⁶

10. See CLOUT Case No. 80 [Kammergericht Berlin, Germany, 24 Jan. 1994] (currency of payment should, in the case of doubt, be that of the place of payment); CLOUT Case No. 281 [Oberlandesgericht Koblenz, Germany, 17 Sept. 1993] (currency of the place where the seller has his place of business is the currency in which the price should be paid); CLOUT Case No. 52 [Municipal Court Budapest, Hungary, 24 Mar. 1992] (court compelled the buyer to pay the seller in the seller's currency without giving a reason).

11. CLOUT Case No. 255 [Kantonsgericht Kanton Wallis (Zivilgerichtshof I), Switzerland, 30 June 1998].

12. CISG Article 55 provides: "Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned."

13. See, e.g., CLOUT Case No. 139 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, 3 Mar. 1995] ("[A]rticle 55 CISG, allowing the price of goods to be determined where it was not expressly or implicitly fixed in a contract or where a contract made no provision for determining it, was not applicable since the parties had implicitly indicated the need to reach agreement on the price in future").

14. CLOUT Case No. 151 [Court of Appeal of Grenoble, France, 26 Apr. 1995].

15. Court of Arbitration of the International Chamber of Commerce, Award No. 8324, 1995, published in *JOURNAL DU DROIT INTERNATIONAL* 1019 (1996); CLOUT Case No. 106 [Supreme Court, Austria, 10 Nov. 1994].

16. CLOUT Case No. 139 [Tribunal of International Commercial Arbitration at the Russian

One question that has vexed the commentators, and also has found its way into the decisions, is the relationship between Article 55 and Article 14. Article 14(1) provides that:

A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provisions for determining the quantity and the price.

This provision has been read by some as requiring an express or implicit price term in the offer, and therefore the absence of a price term would cause the offer to fail for indefiniteness. This would suggest that there is an inherent contradiction between Article 14 and Article 55, and that there would never be a basis under Article 55 to set a price term in the agreement because the agreement would have already failed for lack of a definite offer.

This reading of Article 14, of course, fails to take into consideration that there are *two* sentences in Article 14. The first sentence states that an offer needs definiteness, but does not require a price term. The second sentence simply sets out a safe harbor which provides that if there is a price term and the goods are specified, then the offer will not fail for indefiniteness. Moreover, this argument does not take into consideration the circumstances under which an agreement is formed by performance and the terms, such as price, which must be determined at a later time.

Fortunately, the judicial¹⁷ and arbitral¹⁸ decisions have generally noted that a price may be set under Article 55 if the agreement itself does not provide a price or a basis for determining the price. This of course, as one court sensibly noticed, presupposes that there is some basis for the court to determine a reasonable price, such as an external market for the goods.¹⁹

Federation Chamber of Commerce and Industry, 3 Mar. 1995].

17. CLOUT Case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997].

18. *See, e.g.*, Court of Arbitration of the International Chamber of Commerce, Award No. 7819, 1999, *published in* BULLETIN OF THE ICC INTERNATIONAL COURT OF ARBITRATION 60 (2001) ("Sale without prior fixing of a price is common in international trade, as is shown by the Vienna Convention of 11 April 1980 on the international sale of goods (art. 55). . .").

19. CLOUT Case No. 53 [Supreme Court, Hungary, 25 Sept. 1992].

ARTICLE 56: PRICE SET BY WEIGHT

Article 56²⁰ sets out the standard to determine the price if the price is to be determined by the weight of the goods, but the contract does not specify the standard to determine the weight. Specifically, this article governs if the contract does not specify whether goods should be measured at net or gross weight. Normally, this standard would be determined by the parties' performance in the contract, as well as trade usage and course of dealing.²¹ Thus, this article applies if there is no applicable course of performance, course of dealing, or trade usage. This article has not raised any substantive issues in the cases or even attracted much attention as highlighted by the fact that here is only one reported case on Article 56 in the Digest²² and this case only mentioned the article in passing.

ARTICLE 57: PLACE OF PAYMENT

Article 57²³ designates the place for payment when the parties fail to do so in the contract. This is a default provision, and this article only applies if the contract neither explicitly nor implicitly designates a place for delivery. If the contract does not designate a place of payment, normally payment would be at the seller's place of business as determined under Article 10. However, if payment is to be made against the handing over of the goods or the documents, payment is to be made at the place where the goods or documents are to be received. Most of the cases that mention Article 57 do so for the

20. Article 56 provides: "If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight." CISG art. 56.

21. See CISG art. 9 (the applicability of trade usage and course of dealing).

22. *Victoria Alloys, Inc. v. Fortis Bank*, 261 B.R. 424 (Bankr. N.D. Ohio 2001), United States Bankruptcy Court for the Northern District of Ohio, 10 Apr. 2001. I have only found two other reported cases on Article 56. See *CLOUT Case No. 21* [National Commercial Court of First Instance, Argentina, 20 May 1991 (*Elastar Sacifia v. Bettcher Industries*)]; Supreme Court of the Russian Federation, Russian Federation, 3 Dec. 1998.

23. CISG Article 57 provides:

- (1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:
 - (a) at the seller's place of business; or
 - (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.
- (2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

purpose of restating the rule contained in the article,²⁴ however, a few cases have used this provision to determine the currency of payments.²⁵

In addition, a few cases have added a gloss to Article 57 on the question of the burden of proof as to whether payment has been made. Given that the obligation to pay is an affirmative obligation of the buyer, the decisions have soundly found the burden to prove payment is on the buyer.²⁶ This is consistent with the buyer's obligations in Article 54.

One area in which there has been no consistency in case law is the question of the place of payment for purposes of restitution or other payments other than the price. Although it is not clear that payments other than the price are even governed by Article 57, there is no other article within the CISG, other than the general mandates of Article 7,²⁷ that address these questions. At least two decisions have concluded that in the case of avoidance of the contract, the CISG does not govern the question of restitution, and instead, one should rely on the national law of the avoided contract and any

24. See, e.g., CLOUT Case No. 25 [Cour d'appel de Grenoble, Chambre des Urgences, France, 16 June 1993] ("the price of the goods should have been paid at the place of business of the seller"); CLOUT Case No. 156 [Société Lorraine des Produits Métallurgiques v. Banque Paribas Belgique S.A. and Société BVBA Finecco, Cour d'appel de France, 10 Nov. 1993], published in *JOURNAL DU DROIT INTERNATIONAL* 687 (1994) ("the purchase price was payable at the place of business of the seller"); CLOUT Case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 Dec. 1997] ("the purchase price must be paid at the place the parties agreed upon; if no agreement was made, at the seller's place of business or, if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place"); CLOUT Case No. 223 [Sodime-La Rosa v. Softlife Design Ltd. et al., Cour d'appel de Paris, France, 15 Oct. 1997], available at CISG-France <http://Witz.jura.uni-saarland.de/CISG/decisions/151097.htm> (French) ("applied Article 57 CISG, in accordance with which the price has to be paid at the seller's place of business"); CLOUT Case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997] ("unless the parties had agreed upon another time, the seller can require the buyer to pay the price only after the goods or the documents controlling disposition of the goods are placed at the buyer's disposal").

25. See, e.g., CLOUT Case No. 80 [Kammergericht Berlin, Germany, 24 Jan. 1994], published in *RECHT DER INTERNATIONALEN WIRTSCHAFT* 683 (1994) (holding "the price would still be payable in Italian lira since the place of payment would be the place of business of the Italian seller").

26. CLOUT Case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; see also *Juzgado Sextode Prima Instancia del Portido de Tijuana*, Mexico, 14 July 2000, published in *INTERNATIONALES HANDELSRECHT* 38 (2001) (decided in the same way but on the basis of Mexican procedural law).

27. CISG Article 7 provides:

- (1) 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.
- (2) 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 international law.

relevant conflict of law rules from that national law.²⁸ These results might not be wrong, but it would appear that obtaining this result should require an indirect route through the CISG. Since the CISG governs questions of avoidance and restitution, an agreement otherwise governed by the CISG would appear to require that the initial inquiry should be based on the rules and principles of the CISG. Only if it is determined that the CISG does not answer the question should one fall back on other law. Moreover, this analysis would not necessarily lead to domestic law, but might logically lead to other international legal standards supplementing the CISG and lending support to the internationality of the transaction.²⁹ Thus, as one court concluded, because the CISG lacks a specific directive to a place of payment for an award of restitution, there is a general principle under which "payment is to be made at the creditor's domicile, a principle that is extended to other international trade contracts under article 6.1.6 of the UNIDROIT Principles."³⁰

As the obligation to pay at the seller's place of business arises from the agreement and, as a result, is part of the party obligations at the time of contract formation, paragraph (2) sets out the seller's obligation to pay

28. CLOUT Case No. 421 [Oberster Gerichtshof, Austria, 10 Mar. 1998], *published in* ÖSTERREICHISCHE ZEITSCHRIFT FÜR RECHTSVERGLEICHUNG 161 (1998); CLOUT Case No. 312 [Cour d'appel de Paris, France, 14 Jan. 1998].

29. It is this inability to understand that the CISG, because it is based on international standards, should not be interpreted by domestic law that has confounded some courts. *See, e.g.,* Chicago Prime Packers, Inc. v. Northam Food Trading Co., 320 F. Supp. 2d 702 (N.D. Ill. 2004) (if the CISG does not directly address the question, domestic American law can be consulted).

The recent revisions of the American Uniform Commercial Code specifically directs courts not to use domestic American law to interpret the CISG:

When parties enter into an agreement for the international sale of goods, because the United States is a party to the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Convention may be the applicable law. Since many of the provisions of the CISG appear similar to provisions of Article 2, the committee drafting the amendments considered making references in the Official Comments to provisions in the CISG. However, upon reflection, it was decided that this would not be done because the inclusion of such references might suggest a greater similarity between Article 2 and the CISG than in fact exists. The principle concern was the possibility of an inappropriate use of cases decided under one law to interpret provisions of the other law. This type of interpretation is contrary to the mandate of both the Uniform Commercial Code and the CISG. Specifically, Section 1-103(b) of the Code directs courts to interpret it in light of its common-law history. This was an underlying principle in original Article 2, and these amendments do not change this in any way. On the other hand, the CISG specifically directs courts to interpret its provisions in light of international practice with the goal of achieving international uniformity. *See* CISG art. 7. This approach specifically eschews the use of domestic law, such as Article 2, as a basis for interpretation.

30. CLOUT Case No. 205 [Cour d'appel de Grenoble, France, 23 Oct. 1996] (see full text of the decision).

incidental expenses that are caused by a change in the seller's place of business after the conclusion of the contract but before payment. One court has extended this principle to conclude that if the seller assigns the right of payment, that the buyer must make payment at the assignee's place of business.³¹ This extension would normally be the correct result, subject to the seller being responsible for any additional costs, and presumably limited to the rare circumstances where the assignment of the right of payment created an undue burden on the buyer.

ARTICLE 58: TIME OF PAYMENT

Article 58³² sets the time for payment absent a contrary agreement on this term by the parties.³³ This default rule provides for a cash sale absent any agreement for credit. Payment is due at the time the goods, or documents representing the goods, are put into the buyer's control.³⁴

If the goods are to be shipped, absent a contrary agreement between the parties, the seller may provide for a documentary exchange for goods, and in that case, payment is due upon proper tender of the documents to the buyer.³⁵ The documents, however, must provide the buyer the right to receive the goods, and therefore the decisions have properly noted that documents, such as certificates of origin and quality³⁶ and customs documents,³⁷ which do not

31. CLOUT Case No. 274 [Oberlandesgericht Celle, Germany, 11 Nov. 1998].

32. CISG Article 58 provides:

- (1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.
- (2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.
- (3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

33. CISG art. 58. See generally Lief Sevón, *Obligations of the Buyer under the Vienna Convention on the International Sale of Goods*, SUOMALAINEN LAKIMIESTEN YHDISTYS:—TIDSKRIFT UTGIVEN AV JURIDISKA FORENINGEN I FINLAND 327-43 (1990), available at <http://cisgw3.law.pace.edu/cisg/biblio/sevon.html>.

34. CISG art. 58(1).

35. CISG art. 58(2); CLOUT Case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 Aug. 1997]. This provision simply acknowledges the widespread commercial practice of using documents of title as the basis to provide for a cash sale if the goods are to be shipped.

36. CLOUT Case No. 171 [Bundesgerichtshof, Germany, 3 Apr. 1996].

37. CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 Aug. 1997].

provide the buyer with the right to take possession of the goods, do not trigger the buyer's obligation to pay for the goods under Article 59. In addition, the decisions have sensibly read into Article 58 that the time for payment also triggers the time interest begins to run under Article 78 if payment is not timely.³⁸

ARTICLE 59: BUYER'S AFFIRMATIVE OBLIGATION TO MAKE PAYMENT

Article 59³⁹ requires payment by the buyer without any affirmative action by the seller on the payment date. This provision was enacted to circumvent European legal systems that require a formal demand by the seller in order for payment to become due. Most of the reported cases simply refer to the obligation set out in the article without further analysis,⁴⁰ however, one court appropriately noted that a buyer's failure to meet the requirements of Article 59 provides the seller to recourse under all of the other provisions of the CISG.⁴¹ The cases have also recognized that the failure of the buyer to pay timely under Article 59 provides the basis for interest to begin to accrue under Article 78.⁴²

38. See CLOUT Case No. 228 [Oberlandesgericht Rostock, Germany, 27 July 1995]; CLOUT Case No. 123 [Bundesgerichtshof, Germany, 8 Mar. 1995]; CLOUT Case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 Jan. 1994]; CLOUT Case No. 1 [Oberlandesgericht Frankfurt a.M., Germany, 13 June 1991].

39. CISG Article 59 provides: "The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller."

40. See, e.g., CLOUT Case No. 432 [Landgericht Stendal, Germany, 12 Oct. 2000], *published in* INTERNATIONALES HANDELSRECHT 30 (2001); CLOUT Case No. 297 [Oberlandesgericht München, Germany, 21 Jan. 1998]; CLOUT Case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT Case No. 163 [Arbitration Court of the Chamber of Commerce and Industry of Budapest, Hungary, 10 Dec. 1996]; Amtsgericht Augsburg, Germany, 29 Jan. 1996; CLOUT Case No. 197 [Tribunal Cantonal du Valais, Switzerland, 20 Dec. 1994]; Landgericht Hannover, Germany, 1 Jan. 1993; Amtsgericht Ludwigsburg, Germany, 21 Dec. 1990; CLOUT Case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 Apr. 1990]; CLOUT Case No. 46 [Landgericht Aachen, Germany, 3 Apr. 1989].

41. CLOUT Case No. 281 [Oberlandesgericht Koblenz, Germany, 17 Sept. 1993].

42. See, e.g., CLOUT Case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 Apr. 1997]; Landgericht Kassel, Germany, 15 Feb. 1996; Landgericht München, Germany, 25 Jan. 1996; Amtsgericht Kehl, Germany, 6 Oct. 1995, *published in* RECHT DER INTERNATIONALEN WIRTSCHAFT 957 (1996); CLOUT Case No. 410 [Amtsgericht Alsfeld, Germany, 12 May 1995]; CLOUT Case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 Jan. 1994]; Landgericht Berlin, Germany, 6 Oct. 1992; Landgericht Mönchengladbach, Germany, 22 May 1992; Pretore della giurisdizione di Locarno-Campagna, Italy, 16 Dec. 1991, *published in* SCHWEIZERISCHE ZEITSCHRIFT FÜR INTERNATIONALES UND EUROPÄISCHES RECHT 665 (1993); CLOUT Case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 Apr. 1990].

ARTICLE 60: BUYER'S OBLIGATION TO TAKE DELIVERY

Article 60⁴³ articulates the requirements of the second of the buyer's primary responsibilities under Article 53 (buyer's general obligations).⁴⁴ In addition to paying the price, the buyer must take delivery of the goods. This obligation encompasses both reasonable preparations necessary to take delivery as well as taking physical control of the goods.

Article 60 corresponds with the seller's obligation to deliver under Article 31.⁴⁵ Absent a contrary agreement, the buyer's obligation to take delivery does not occur until the seller has met the requirements to deliver the goods.⁴⁶ Depending on the type of transaction, the buyer's obligation may arise at different times.⁴⁷ For instance, absent a contrary agreement, under Article 58 the seller and buyer must perform their obligations concurrently.⁴⁸ In this case, the buyer would have no obligation to perform until this concurrent exchange takes place. Similarly, if the contract involves the carriage of goods, the buyer's obligation to take delivery does not arise until the seller places the goods at the buyer's disposal under Article 31(b).⁴⁹

Paragraph (a) expresses the parties general obligation of cooperation.⁵⁰ This provision expands the remedies available to the seller.⁵¹ The action required by the buyer may range from the simplest responsibility, such as arranging the exact place for delivery, to more complex obligations, such as making arrangements for the carriage of the goods. Whatever the case may be, the contract will govern the corresponding ancillary obligations.

Paragraph (b) articulates the buyer's responsibility to take control of the goods.⁵² One court has correctly noted that the buyer is required to take

43. CISG Article 60 provides:

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

44. CLOUT Case No. 47 [Landgericht Aachen, Germany, 14 May 1993].

45. CISG art. 31.

46. CISG art. 58.

47. *Id.*

48. *Id.*

49. *Id.* See also CISG art. 31(b). Furthermore, the seller retains the risk of loss until the buyer "takes over" the goods. See CISG arts. 63-64, 66-70.

50. CISG art. 58.

51. CISG art. 60(a). If the seller has given the buyer a *Nachfrist* notice under CISG Article 63(1), the buyer's failure to comply with the "enabling" steps would constitute a material breach qualifying for avoidance under CISG Article 64(b).

52. CISG art. 60(b).

delivery of the goods when a fault in conformity does not constitute a fundamental breach.⁵³ This is an important obligation, as the buyer's failure to take delivery of the goods under this provision constitutes a breach of contract, and the seller may avoid the contract if the breach is fundamental.

53. CLOUT Case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 Jan. 1994].