Article 3

1. Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

2. This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

OVERVIEW

1. This provision makes clear that the Convention's sphere of application encompasses some contracts that include acts in addition to the supply of goods.[1]

CONTRACTS FOR THE SALE OF GOODS TO BE MANUFACTURED OR PRODUCED

2. Under paragraph 1 of article 3, the Convention applies to contracts for the sale of goods to be manufactured or produced.[2] This makes clear that the sale of such goods is as much subject to the provisions of the Convention as the sale of ready-made goods.[3] This aspect of the Convention's sphere of application is, however, subject to a limitation: contracts for goods to be manufactured or produced are not governed by the Convention if the party who "orders" the goods supplies a "substantial part" of the materials necessary for their manufacture or production.[4] Article 3 does not provide specific criteria for determining when the materials supplied by the buyer constitute a "substantial part". One decision suggests that a purely quantitative test should be used in this determination.[5]

3. A different—albeit related—issue is whether providing instructions, designs or specifications used for producing goods is the supply of "materials necessary" for the goods' manufacture or production; if so, a sales contract in which the buyer supplies such information is excluded from the Convention's sphere of application if the "substantial part" criterion is met. In one case, a court held that the Convention was inapplicable, on the grounds of article 3 (1), to a contract under which the seller had to manufacture goods according to the buyer's design specifications.[6] The court deemed the plans and instructions that the buyer transmitted to the seller to constitute a "substantial part of the materials necessary" for the production of the goods. Other courts have found that design specifications are not considered "materials necessary for the manufacture or production of goods" within the meaning of article 3 (1).[7]

CONTRACTS FOR THE DELIVERY OF LABOUR AND SERVICES

4. Article 3 (2) extends the Convention's sphere of application to contracts in which the seller's obligations include—in addition to delivering the goods, transferring the property and handing over the documents[8]—a duty to provide labour or other services, as long as the supply of labour or services does not constitute the "preponderant part" of the seller's obligations.[9] It has been held that work done to produce the goods themselves is not to be considered the supply of labour or other services for **purposes of article 3 (2).**[10] In order to determine whether the obligations of the seller consist preponderantly in the supply of labour or services, a comparison must be made between the economic value of the obligations relating to the supply of labour and services and the economic value of the obligations regarding the goods,[11] as if two separate contracts have been made.[12] Thus, where the obligation regarding the supply of labour or services amounts to more than 50 per cent of the obligations of the seller, the Convention is inapplicable. It is on this basis that a court decided that a contract for a market study did not fall under the Convention's sphere of application.[13] On the other hand, a contract for the dismantling and sale of a second-hand hangar was deemed to fall within the Convention's sphere of application on the ground that the value of the dismantling services amounted to only 25 per cent of the total value of the contract.[14]

5. One court has stated that, because a clear calculation comparing the values of the goods and the services covered by a contract would not always be possible, other factors—such as the circumstances surrounding the conclusion of the contract and the purpose of the contract—should also be taken into account in evaluating whether the obligation to supply labour or services is preponderant.[15] Another court referred to the essential purpose of the contract as a criterion relevant in determining whether or not the Convention was applicable.[16]

Notes

[1]See United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 16.

[2]See Hof van Beroep Gent, Belgium, 15 May 2002, available on the Internet at http://www.law.kuleuven.be/ipr/eng/cases/2002-05-15.html; CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002 (see full text of the decisions); Oberster Gerichtshof, 18 April 2001, available on the Internet at http://www.cisg.at/7_7601d.htm; Saarländisches Oberlandesgericht Saarbrücken, 14 February 2001, *Internationales Handelsrecht*, 2001, 64; Oberlandesgericht Stuttgart, Germany, 28 February 2000, available on the Internet at http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/583.htm; CLOUT case No. 630 [Court of Arbitration of the International Chamber of Commerce, Zurich, Switzerland, July 1999]; CLOUT case No. 325 [Handelsgericht des Kantons Zürich, Switzerland, 8 April 1999]; CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999]; CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998] (see full text of the decision); CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996]; CLOUT case No. 164 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995]; Hof s'Hertogenbosch, Netherlands, 9 October 1995, Nederlands Internationaal Privaatrecht, 1996, No. 118; Landgericht Oldenburg, Germany, 9 November 1994, *Recht der internationalen Wirtschaft*, 1996, 65 f.; CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision); CLOUT case No. 262 [Kanton St. Gallen, Gerichtskommission Oberrheintal, Switzerland, 30 June 1995]; Landgericht Memmingen, Germany, 1 December 1993, *Praxis des internationalen Privat- und Verfahrensrechts*, 1995, 251 f.; CLOUT case No. 302 [ICC Court of Arbitration Award 7660/JK], see also *ICC Court of Arbitration Bulletin*, 1995, 69 ff.; ICC Court of Arbitration Award No. 7844/1994, *ICC Court of Arbitration Bulletin*, 1995, 72 ff.; CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993]; CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992] (see full text of the decision).

[3]See also United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 17.

[4]For the applicability of the CISG in cases where reference was made to article 3 (1), but where the courts stated that the "substantial part of the materials necessary" was provided by the seller, see Landgericht München, 27 February 2002, available on the Internet at http://131.152.131.200/cisg/urteile/654.htm; CLOUT case No. 313 [Cour d'appel Grenoble, France, 21 October 1999]; Landgericht Berlin, Germany, 24 March 1998, available on the Internet at http://www.unilex.info/case.cfm?pid=1&do=case&id=440&step=FullText.

[5]See CLOUT case No. 164 [Arbitration—Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (see full text of the decision).

[6]See CLOUT case No. 157 [Cour d'appel Chambéry, France, 25 May 1993].

[7]See CLOUT case No. 331 [Handelsgericht des Kantons Zürich, Switzerland, 10 February 1999] (see full text of the decision); CLOUT case No. 2 [Oberlandesgericht Frankfurt am Main, Germany, 17 September 1991] (see full text of the decision).

[8]For a definition of a contract for the sale of goods under the Convention, see the text of the Digest relating to art. 1.

[9]See Hof Arnhem, Netherlands, 27 April 1999, *Nederlands Internationaal Privaatrecht*, 1999, No. 245; CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999]; CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision); CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997]; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995]; CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995]; CLOUT case No. 105 [Oberster Gerichtshof, Austria, 27 October 1994]; CLOUT case No. 201 [Richteramt Laufen des Kantons Berne, Switzerland, 7 May 1993]; for a decision in which article 3 (2) was cited, but in which the court did not resolve the issue of whether the contract was one for the sale of goods or one for the supply of labour and services, see Rechtbank Koophandel Hasselt, 19 September 2001, available on the Internet at http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-09-19.htm.

[10]CLOUT case No. 481 [Court d' Appel Paris, France, 14 June 2001]. See also CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002 (see full text of the decisions) (approving lower appeals court's approach that applied the Convention to contract for the sale of specially manufactured goods and rejected trial court's holding that the Convention was inapplicable because the services used to produce the goods constituted the preponderant part of the seller's obligations)

[11]See CLOUT case No. 327 [Kantonsgericht des Kantons Zug, Switzerland, 25 February 1999].

[12]For an implicit affirmation of the principle referred to in the text, see CLOUT case No. 26 [Arbitration—International Chamber of Commerce no. 7153 1992].

[13]See CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994].

[14]See CLOUT case No. 152 [Cour d'appel Grenoble, France, 26 April 1995] (see full text of the decision).

[15]See CLOUT case No. 346 [Landgericht Mainz, Germany, 26 November 1998].

[16]See Cass. civ., Italy, 9 June 1995, no. 6499, *Foro padano*, 1997, 2 ff., available on the Internet at http://www.unilex.info/dynasite.cfm?dssid=2376&dsmid=13354&x=1 and at http://www.cisg.law.pace.edu/cgi-bin/isearch.