



**United Nations Commission
on International Trade Law**

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

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Meaning and purpose of the provision

1. Article 51 deals with partial non-delivery and delivery of partially non-conforming goods. The general rule is that apart from damages all remedies of the buyer refer only to that part of the contract which is not performed. The rest of the contract remains unimpaired. In particular the entire contract generally cannot be

* 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.

declared avoided.¹ Only if the partial non-performance amounts to a fundamental breach of the entire contract the buyer is also entitled to avoid the entire contract.

Prerequisites

2. Article 51 presupposes that the seller has breached the contract either by delivering fewer goods than contracted or by delivering goods part of which do not conform with the contract in the sense of article 35.² In any case, article 51 requires that the delivered goods consist of separable parts, e.g., some tons of cucumber,³ a shipment of tiles,⁴ textiles,⁵ larger quantities of stainless steel wire,⁶ scaffold fittings⁷ or even a complete automatic assembly line for batteries for which the contracted spare parts were missing.⁸ In case of a defective piece of machinery article 51 has been found to apply when the piece forms an independent part of the contracted good.⁹

3. The remedies provided by article 51 presuppose that the buyer has given notice of the lack of conformity as required by article 39.¹⁰ The notice requirement has to be observed as well in cases where the seller has delivered only a part of the goods.¹¹

Remedies for partial non-performance

4. With regard to the non-conforming part of the delivered goods the buyer is entitled to any of the remedies referred to in articles 46–50. However, the specific requirements of those provisions must be satisfied in each case. If the buyer wants to declare avoidance with regard to the part of goods which do not conform with the contract then the lack of quality must constitute a fundamental breach—that means that the non-conforming goods must be of no reasonable use to the buyer.¹² On the other hand, the fixing of an additional period of time for the delivery of conforming goods cannot help establish a right of avoidance since the mechanism of article 49 (1) (b) applies only in case of non-delivery but not in case of delivery of defective goods.¹³ Partial non-delivery does not generally constitute a fundamental partial breach of contract and therefore does not entitle the buyer to avoid the

¹ CLOUT case No. 302 [Arbitration—International Chamber of Commerce No. 7660 1994] (see full text of the decision).

² However, article 35 also covers delivery of a smaller quantity than contracted.

³ CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993].

⁴ CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991].

⁵ CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994].

⁶ CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997].

⁷ CLOUT case No. 304 [Arbitration—International Chamber of Commerce No. 7531 1994].

⁸ CLOUT case No. 302 [Arbitration—International Chamber of Commerce No. 7660 1994].

⁹ *Id.*

¹⁰ CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]; CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991].

¹¹ CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993].

¹² See CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997] (parts of delivered steel wire were sub-standard and therefore not useable for the buyer's purposes) (see full text of the decision); for details compare Digest article 49 at footnotes 16, 17.

¹³ See Digest article 49 at footnote 21.

contract. The buyer may however fix an additional period of time for delivery of the missing part and may declare the contract partially avoided when delivery is not effected during the period so fixed. Partial non-delivery on a fixed date amounts to a fundamental breach—with regard to the missing part—only if the buyer has a special interest in delivery exactly on time and in respect of which the seller could foresee that the buyer would prefer non-delivery instead of late delivery.¹⁴

5. Article 51 (1) refers only to the remedies provided in articles 46–50. This does not mean that the remedy of damages is excluded. On the contrary, this remedy remains unimpaired and can be exercised in addition to or instead of the remedies referred to in article 51 (1). Even if the buyer has lost its right to declare a part of the contract avoided because of lapse of time, it may still claim damages.¹⁵

Avoidance of the entire contract (article 51 (2))

6. According to article 51 (2) the buyer can avoid the entire contract only if the partial non-performance constitutes a fundamental breach of the entire contract. The partial breach must deprive the buyer of the main benefit of the whole contract (article 25). This is however the exception rather than the rule.¹⁶

¹⁴ CLOUT case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 April 1997].

¹⁵ CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russia, 23 November 1994, award No. 251/93, Unilex.

¹⁶ CLOUT case No. 302 [Arbitration—International Chamber of Commerce No. 7660 1994].