

Article 14

(1) 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 provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

OVERVIEW

1. Article 14 sets out the conditions on which a proposal to conclude a contract constitutes an offer that, if accepted by the addressee, will lead to the conclusion of a contract under the Convention. This article has been applied to determine whether a statement or other conduct rejecting an offer constitutes a counter-offer (see article 19 (1)).¹ The principles set out in this article—i.e., the person making the proposal must intend to be bound, and the proposal must be sufficiently definite—have been applied, together with those in other articles of Part II, notwithstanding that Part II was not applicable by virtue of a declaration under article 92.² For discussion of whether Part II of the Convention provides the exclusive way to conclude a contract governed by the Convention, see the Digest for Part II. According to one decision, article 14 is not relevant in determining applicability of the CISG.³

2. The identity of the person making a proposal or of the person to which the proposal is made may be uncertain. Decisions have applied article 14 and the rules of interpretation in article 8 to this issue.⁴

ADDRESSEES OF PROPOSAL

3. The first sentence of paragraph (1) focuses on proposals that are addressed to one or more specific persons.⁵ Under the applicable law of agency, the maker of an offer addressed to an agent may be bound by the acceptance of the principal.⁶ One decision states that article 14 (1) rather than the law of agency governs the issue of identifying whether a manufacturer or its distributor is party to the contract.⁷ CISG also applies in determining who is the offeror, and whether a party transmitting an offer is a mere intermediary.⁸ In addition, one court has resorted to article 14 to analyse whether there was an acceptance of the subrogation of one of the parties to the contract.⁹

4. Paragraph (2) provides for proposals other than ones addressed to one or more specific persons. There are no reported decisions applying paragraph (2).

INDICATION OF INTENT TO BE BOUND BY ACCEPTANCE

5. The first sentence of paragraph (1) provides that, to constitute an offer, a proposal to conclude a contract must indicate the intention of the proponent to be bound if the addressee accepts the proposal. The intent may be shown by interpretation of a statement or act in accordance with paragraphs (1) or (2) of article 8.¹⁰ By virtue of paragraph (3) of article 8, this intent may be established by all the relevant circumstances, including statements or other conduct during negotiations and the conduct of the parties after the alleged conclusion of the contract.¹¹ A buyer was found to have indicated its intent to be bound when it sent the seller an “order” that stated “we order” and that called for “immediate delivery”.¹² A communication in the English language sent by a French seller to a German buyer was interpreted by the court as expressing the seller’s intent to be bound.¹³ Where both parties had signed an order designating a computer programme and its price, the buyer was unable to establish that the order merely indicated an intention to describe details of a contract to be concluded at a later time rather than an intention to conclude the contract by means of the order.¹⁴ Another buyer’s order specifying two sets of cutlery and the time for delivery was likewise interpreted as indicating an intent to be bound in case of acceptance, notwithstanding buyer’s argument that it had merely proposed future purchases.¹⁵ On the other hand, no offer was deemed to exist where the proposal reserved the power of the party to refuse to enter into the contract, by using the expression “non-committed”.¹⁶ Furthermore, one decision considered that the sending of samples is not an offer.¹⁷

DEFINITENESS OF PROPOSAL

6. To be deemed an offer, a proposal to conclude a contract not only must indicate an intent to be bound by an acceptance but also must be sufficiently definite.¹⁸ The second sentence of paragraph (1) provides that a proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. Practices established between the parties may supply the details of quality, quantity and price left unspecified in a proposal to conclude a contract.¹⁹ Decisions have applied

the rules of interpretation in article 8 to determine whether a communication or act is sufficiently definite.²⁰ One court has concluded that, if the intent to be bound by an acceptance is established, a proposal is sufficiently definite notwithstanding the failure to specify the price.²¹ Sufficient definiteness is also given if the proposal contains certain options between which the offeree can – and does – choose.²²

7. Article 14 does not require that the proposal include all the terms of the proposed contract.²³ If, for example, the parties have not agreed on the place of delivery,²⁴ the period of delivery,²⁵ or the mode of transportation²⁶ the Convention may fill the gap.

INDICATION OF THE GOODS

8. To be sufficiently definite under the second sentence of paragraph (1) a proposal must indicate the goods. There is no express requirement that the proposal indicate the quality of the goods. One court found that a proposal to buy “chinchilla pelts of middle or better quality” was sufficiently definite because a reasonable person in the same circumstances as the recipient of the proposal could perceive the description to be sufficiently definite.²⁷ Another court assumed that an offer to purchase monoammoniumphosphate with the specification “P 205 52 per cent +/-1 per cent, min 51 per cent” was a sufficiently definite indication of the quality of the goods ordered.²⁸ If, however, the parties are unable to agree on the quality of the goods ordered there is no contract.²⁹

FIXING OR DETERMINING THE QUANTITY

9. To be sufficiently definite under the second sentence of paragraph (1) a proposal must expressly or implicitly fix or make provision for determining the quantity.³⁰ The following quantity designations have been found sufficiently definite: a reference to “700 to 800 tons” of natural gas when usage in the natural gas trade treated the designation as adequate;³¹ “an order up to 250,000 pounds” of soy lecithin;³² “a greater number of Chinchilla furs” because the buyer accepted the furs tendered without objection;³³ “three truck loads of eggs” because the other party reasonably understood or ought to have understood that the trucks should be filled to their full capacity;³⁴ “20 truck loads of tinned tomato concentrate” because the parties understood the meaning of these terms and their understanding was consistent with the understanding in the trade;³⁵ “10,000 tons +/-5 per cent”.³⁶ A court has found that a buyer’s proposal that expressly designated no specific quantity was sufficiently definite because, under an alleged customary usage, the proposal would be construed as an offer to purchase the buyer’s needs from the offeree.³⁷ Another court found that the seller’s delivery of 2,700 pairs of shoes in response to the buyer’s order of 3,400 pairs was a counter-offer accepted by the buyer when it took delivery; the contract was therefore concluded for only 2,700 pairs.³⁸ It was also held that the crop to be harvested from a defined 10 ha piece of land was a sufficiently definite quantity.³⁹

10. A distribution agreement specifying terms on which the parties would do business and obliging the buyer to order a specified amount was found not sufficiently definite because it did not state a specific quantity.⁴⁰

FIXING OR DETERMINING THE PRICE

11. To be sufficiently definite under the second sentence of paragraph (1) a proposal must expressly or implicitly fix or make provision for determining not only the quantity but also the price. Proposals with the following price designations have been found sufficiently definite: pelts of varying quality to be sold “at a price between 35 and 65 German Marks for furs of medium and superior quality” because the price could be calculated by multiplying the quantity of each type by the relevant price;⁴¹ no specific agreement on price where a course of dealing between the parties established the price;⁴² a proposal that prices were to be adjusted to reflect market prices;⁴³ agreement on a provisional price to be followed by establishment of a definitive price after the buyer resold the goods to its customer, because such an arrangement was regularly observed in the trade;⁴⁴ an agreement that the price of sour cherries would be “be fixed during the season,” which was determinable under the standard of article 55.⁴⁵

12. The following proposals were found to be insufficiently definite: a proposal that provided for several alternative configurations of goods but did not indicate a proposed price for some elements of the alternative proposals;⁴⁶ an agreement that the parties would agree on the price of additional goods ten days before the new year.⁴⁷

13. One court has concluded that, if the intent to be bound by an acceptance is established, a proposal is sufficiently definite notwithstanding the failure to specify the price.⁴⁸

RELEVANCE OF PRICE FORMULA IN ARTICLE 55

14. Article 14 states that a proposal to conclude a contract is sufficiently definite if it “fixes or makes provision for determining” the price. Article 55 provides a price formula that applies “[w]here a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price”.⁴⁹ The price supplied by article 55 is “the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.”

15. Most decisions have declined to apply article 55.⁵⁰ Several have concluded that article 55 was not applicable because the parties had expressly or implicitly fixed or made provision for determining the price, thereby satisfying the definiteness requirement set out in article 14 (1).⁵¹ One tribunal found that where the parties had agreed to fix the price at a later time but had not done so, the proposal was not sufficiently definite under article 14 (1) and that article 55 was not applicable because of the parties’ agreement to fix the price at a later time.⁵² In another case where the proposal to conclude a contract failed to fix the price, the court declined to apply article 55 to fix the price because there was no market price for the aeroplane engines concerning which the parties were negotiating.⁵³ Another court also found that, to the extent the price formula of article 55 might be applicable, the parties had derogated from that formula by their agreement.⁵⁴

16. Some decisions, however, have taken a more liberal approach by considering that a sales contract can be validly concluded without any reference to the price (express or implicit) by the parties; the price is then objectively determined by reference to a general price, i.e., under the article 55 formula.⁵⁵ Or, in the case of urgent transactions, if no price is mentioned it is assumed that the parties intended the price currently charged for such goods.⁵⁶

17. When enforcing an agreement notwithstanding the fact that the parties had not fixed the price in their original negotiations, one court has invoked article 55. In that case, the court stated that the price set out in a corrected invoice issued by the seller at the request of the buyer and to which the buyer

did not object was to be interpreted as the price charged under comparable circumstances in the trade concerned, as provided in the article 55 formula.⁵⁷ Another court has considered the application of article 55 in a situation where the term “to be fixed during the season” was interpreted as an agreement that the parties wanted to agree on the price at a later point in time; it was held that this would not affect the validity of the contract since, according to article 6 CISG, the parties are entitled to exclude the requirements of article 14 (1) sentence two and to disregard the minimum requirements for an offer.⁵⁸ In this regard the type of goods (for example seasonal goods) as well as the agreed quantity play an important role, while other factors, such as the price for reselling the goods, might be of less importance.⁵⁹

Notes

¹ CLOUT case No. 121 [Oberlandesgericht Frankfurt, Germany, 4 March 1994], English translation available on the Internet at www.cisg.law.pace.edu (a buyer’s purported acceptance that included both screws for which the seller had stated the price and additional screws for which the seller had not stated the price was a counter-proposal that was not sufficiently definite because the price of the latter screws were not fixed or determinable). See also CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997], English translation available on the Internet at www.cisg.law.pace.edu (stating that a counter-offer must satisfy the conditions of article 14).

² CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995] (applying the general principles of Part II rather than the national law applicable by virtue of private international law to transaction between Finnish seller and German buyer).

³ Supreme Court, Poland, 27 January 2006, Unilex (CISG governs a long-term framework contract).

⁴ CLOUT case No. 429 [Oberlandesgericht Frankfurt, Germany, 30 August 2000], English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Stuttgart, Germany, 28 February 2000, available on the Internet at www.cisg-online.ch; Hoge Raad, Netherlands, 7 November 1997, Unilex; CLOUT case No. 334 [Obergericht des Kantons Thurgau, Switzerland, 19 December 1995]; CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995]; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990], English translation available on the Internet at www.cisg.law.pace.edu. See paragraph 15 of the Digest for Part II.

⁵ Oberlandesgericht Graz, Austria, 15 June 2000, English translation available on the Internet at www.cisg.law.pace.edu (an offer addressed to two companies, both are entitled to accept it).

⁶ CLOUT case No. 239 [Oberster Gerichtshof, Austria, 18 June 1997], English translation available on the Internet at www.cisg.law.pace.edu (if offeror knew that addressee was acting as agent, then offeror should expect proposal to be transmitted to the principal; if offeror did not know or was unaware that addressee was an agent, the offeror was not bound by principal’s acceptance; case remanded to determine whether the addressee was agent and whether offeror knew of this); Oberlandesgericht Graz, Austria, 15 June 2000, English translation available on the Internet at www.cisg.law.pace.edu (CISG does not provide for questions of representation and thus national law applies); Oberlandesgericht Graf, Austria, 24 February 1999, English translation available on the Internet at www.cisg.law.pace.edu (agency issues governed by domestic law); Landgericht Landshut, Germany, 12 June 2008, English Translation available on the Internet at www.cisg.law.pace.edu (the CISG does not provide for the transfer of authority); and Hangzhou Intermediate People’s Court, People’s Republic of China, 2002, English abstract, available on the Internet at www.cisg.law.pace.edu.

⁷ CLOUT case No. 334 [Obergericht des Kantons Thurgau, Switzerland, 19 December 1995] (interpreting the statements and acts of the parties in accordance with article 8, manufacturer rather than its dealer was party to contract; manufacturer had, however, assigned its claim for breach to dealer).

⁸ Bundesgericht, Switzerland, 4 August 2003, English translation available on the Internet at www.cisg.law.pace.edu (the seller bought the goods (wine) from a third party who sent the goods directly to the buyer. The Court, considering article 14 (1) and article 8 CISG, stated that delivering wine was not an implied offer to contract with the buyer, and thus the acceptance of the delivery does not amount to an acceptance as concerns the claimed deference of contractual rights).

⁹ Oberlandesgericht Frankfurt, Germany, 6 October 2004, English Translation available on the Internet at www.cisg.law.pace.edu (no consent was found and the fact that the seller kept to the business relationship with the buyer as a whole cannot be considered as consent to the unmodified contractual rights and obligations from the buyer’s predecessor).

¹⁰ CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision).

¹¹ CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (stressing the parties’ conduct subsequent to conclusion of the contract).

¹² CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995] (see full text of the decision). Regional Court in Zilina, Slovakia, 18 June 2007, English translation available on the Internet at www.cisg.law.pace.edu (the court considered that there was no contract according to CISG because it lacked of quantity and type of the goods, however there was performance by sending the goods and paying for them and thus one of the contracts deemed to be concluded).

¹³ Oberlandesgericht Hamburg, Germany, 4 July 1997, Unilex (“We can only propose you”; “First truck could be delivered”).

¹⁴ CLOUT case No. 131 [Landgericht München, Germany, 8 February 1995], English translation available on the Internet at www.cisg.law.pace.edu.

¹⁵ CLOUT case No. 217 [Handelsgericht des Kantons Aargau Switzerland 26 September 1997].

¹⁶ Kantonsgericht Zug, Switzerland, 2 December 2004, English translation available on the Internet at www.cisg.law.pace.edu (the use of the term “non-committed” normally negates the intention of the offeror to be bound).

¹⁷ Hof van Beroep, Belgium, 8 November 2004, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁸ CLOUT case No. 417 [U.S. District Court, Northern District of Illinois, United States, 7 December 1999], full text available on the Internet at www.cisg.law.pace.edu (conditions satisfied); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 13 April 2006, English translation available on the Internet at www.cisg.law.pace.edu (conditions in the document that the parties designated a contract were qualified by the Tribunal as an agreement to generally agreed terms for future contracts [i.e., a framework agreement], since it lacked essential terms of the contracts, which were further stipulated by the parties in separate agreements named Supplements to the contract); China International Economic & Trade Arbitration Commission [CIETAC], People’s Republic of China, 23 April 1997, English translation available on the Internet at www.cisg.law.pace.edu (For a contract to be concluded under CISG, article 14 CISG needs to be satisfied; additional items such as “Detailed Color & Equipment Attached” but not included does not prevent contract formation as they would have to be clarified during the performance of the contract. Since agreement on those issues never took place, the Arbitral tribunal held that both parties were liable for the indefinite description of the goods, and the non-performance of the contract, and thus ordered the termination of the contract in accordance with article 81.2 CISG); Fovárosi Biróság, Hungary, 10 January 1992, English translation available on the Internet at www.cisg.law.pace.edu (deeming an offer specific as regards the quantity of the engines offered, depending on the unilateral choice of the buyer in regard to the kind of aircraft it would purchase as well as whether an option was exercised; decision reversed on other grounds: CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992]).

¹⁹ CLOUT case No. 52 [Fovárosi Biróság, Hungary, 24 March 1992] (citing article 9 (1), court concludes that prior sales transactions between the parties supplied details unstated in telephone order); Oberlandesgericht Hamm, Germany, 12 November 2001, English translation available on the Internet at www.cisg.law.pace.edu (deliveries on short notice formed part of the practices that the parties had established between themselves); CLOUT case No. 777 [U.S. Court of Appeals for the Eleventh Circuit, United States, 12 September 2006] (Treibacher Industrie, A.G. v. Allegheny Technologies, Inc.), available on the Internet at www.cisg.law.pace.edu (articles 8 and 9 used to interpret one of the terms in the contract, i.e., an agreement to sell a fixed quantity of materials at a fixed price for delivery to “consignment”, which according to the practices established between the parties, and contrary to the industry usage, required the buyer to accept and pay for all of the goods specified in each contract).

²⁰ CLOUT Case No. 1034 [Audiencia Provincial de Cáceres, Spain, 14 July 2010], text available on the Internet at <http://www.cisgspanish.com>.

²¹ CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995] (fax “ordering” software devices sufficiently definite notwithstanding failure to mention price).

²² Oberlandesgericht Koblenz, Germany, 1 March 2010, *Neue Juristische Wochenschrift – Rechtsprechungs Report 2010*, 1004 = CISG-online No. 2126.

²³ See CLOUT case No. 131 [Landgericht München, Germany, 8 February 1995], English translation available on the Internet at www.cisg.law.pace.edu. (Contract for purchase of software enforceable even if parties intended further agreement with respect to use of software).

²⁴ CLOUT case No. 360 [Amtsgericht Duisburg, Germany, 13 April 2000] (article 31 (a) applies when buyer was unable to establish parties agreed on different place).

²⁵ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russia Federation, 13 April 2006, English translation available on the Internet at www.cisg.law.pace.edu (resorting to article 33 CISG).

²⁶ CLOUT case No. 261 [Bezirksgericht der Sanne, Switzerland, 20 February 1997] (English translation available on the Internet at www.cisg.law.pace.edu) (seller deemed authorized to arrange for transportation under article 32 (2) when buyer was unable to establish that parties agreed on transport by truck).

²⁷ CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

²⁸ CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (remanding to lower court to determine whether an apparently contradictory response was sufficiently definite).

²⁹ CLOUT case No. 135 [Oberlandesgericht Frankfurt a.M., Germany 31 March 1995] (no agreement on quality of test tubes).

³⁰ Kantonsgericht Zug, Switzerland, 2 December 2004, English Translation available on the Internet at www.cisg.law.pace.edu (a negotiation with no precise agreement on quantity is not a proposal under article 14.1 CISG).

³¹ CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996], English translation available on the Internet at www.cisg.law.pace.edu (see full text of the decision).

³² U.S. District Court, Delaware, United States, 9 May 2008 (Solae, LLC v. Hershey Canada, Inc.), available on the Internet at www.cisg.law.pace.edu.

³³ CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (citing article 8 (2), (3)) (see full text of the decision).

³⁴ Landgericht Oldenburg, Germany, 28 February 1996, English translation available on the Internet at www.cisg.law.pace.edu (citing article 8 (2)).

³⁵ Oberlandesgericht Hamburg, Germany, 4 July 1997, Unilex.

³⁶ CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (remanding to lower court to determine whether other elements of acceptance were sufficiently definite).

³⁷ CLOUT case No. 579 [U.S. District Court, Southern District of New York, United States, 10 May 2002, *Federal Supplement (2nd Series)* 201, 236 ff. Confirmed by U.S. District Court, Southern District of New York, United States, 21 August 2002 (Geneva Pharmaceuticals Tech. Corp. v. Barr Labs. Inc.), available on the Internet at www.cisg.law.pace.edu.

³⁸ CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995].

³⁹ Oberlandesgericht Brandenburg, Germany, 3 July 2014, *Internationales Handelsrecht* 2014, 228 = CISG-online No. 2543.

⁴⁰ CLOUT case No. 187 [U.S.D. District Court, Southern District of New York, United States, 23 July 1997] (see full text of the decision).

⁴¹ CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994].

⁴² CLOUT case No. 52 [Fovárosi Biróság, Hungary, 24 March 1992] (citing article 9 (1)).

⁴³ CLOUT case No. 155 [Cour de cassation, France, 4 January 1995], English translation available on the Internet at www.cisg.law.pace.edu *affirming*, CLOUT case No. 158 [Cour d'appel, Paris, France, 22 April 1992] (“à revoir en fonction de la baisse du marché”).

⁴⁴ ICC award No. 8324, 1995, Unilex.

⁴⁵ Landgericht Neubrandenburg, Germany, 3 August 2005, English translation available on the Internet at www.cisg.law.pace.edu.

⁴⁶ CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992] (see full text of the decision, available on the Internet at www.cisg.law.pace.edu).

⁴⁷ CLOUT case No. 139 [Tribunal of International Commercial Arbitration of the Russian Federation Chamber of Commerce and Industry, Russian Federation, award in case No. 309/1993 of 3 March 1995]; Federation Chamber of Commerce and Industry, Russian Federation, award in case No. 304/1993 of 3 March 1995, published in *Rozenberg, Praktika of Mejdunarodnogo Commercheskogo Arbitrajnogo Syda: Haychno-Practicheskij Commentariy* 1997, No. 21 [46–54] (citing article 8).

⁴⁸ CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995] (fax “ordering” software devices sufficiently definite notwithstanding failure to mention price).

⁴⁹ CLOUT case No. 1451 [Supreme Court, Czech Republic, 25 June 2008], English translation available on the Internet at www.cisg.law.pace.edu (considering that article 55 concerning the purchase price is applicable only on the condition that the agreement has been validly concluded).

⁵⁰ See also Oberlandesgericht Frankfurt a.M., Germany, 15 March 1996, available on the Internet at www.cisg-online.ch (citing articles 14 and 55 when expressing doubt parties had undertaken obligations), *affirmed*, CLOUT case No. 236 [Bundesgerichtshof, Germany, 23 July 1997] (no citation to articles 14 or 55); CLOUT case No. 410 [Landgericht Alsfeld, Germany, 12 May 1995], English translation available on the Internet at www.cisg.law.pace.edu (court indicates that buyer did not allege circumstances from which a lower price could establish a contract in accordance with article 55) (see full text of the decision); Kantonsgericht Freiburg, Switzerland, 11 October 2004, English translation available on the Internet at www.cisg.law.pace.edu (a proposal with no price is not an offer); Tribunal of International Commercial Arbitration at the Russian Chamber of Commerce and Industry, Russian Federation, 9 April 2004, English Translation available on the Internet at www.cisg.law.pace.edu (a clause about the price requiring it to be agreed within a settled period of time (yet, it was not agreed), served as a foundation for the declaration that the contract was not concluded for the following period, citing articles 14 and 55 as well as domestic law).

⁵¹ CLOUT case No. 343 [Landgericht, Darmstadt, Germany 9 May 2000] (parties’ agreement as to price enforceable even if price different from that of the market); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (transaction between a German seller and an Austrian buyer; parties had fixed the price in a contract concluded by offer and acceptance; the court therefore reversed an intermediate court’s application of article 55).

⁵² CLOUT case No. 139 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, award in case No. 309/1993 of 3 March 1995] (transaction between a Ukrainian seller and an Austrian buyer; court found that buyer may have separate claim for seller’s failure to propose a price during the designated time).

⁵³ CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992], English translation available on the Internet at www.cisg.law.pace.edu (transaction between a U.S. seller and a Hungarian buyer).

⁵⁴ CLOUT case No. 151 [Cour d’appel, Grenoble, France, 26 February 1995], English translation available on the Internet at www.cisg.law.pace.edu (buyer had accepted invoices with higher than market prices).

⁵⁵ CLOUT No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007], English translation available on the Internet at www.cisg.law.pace.edu (*obiter dicta*).

⁵⁶ CLOUT No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007], English translation available on the Internet at www.cisg.law.pace.edu (considering in a sale of an oven that if the buyer passes an order for generic goods which he never acquired before and without any reference to a price, this order constitutes an invitation to bid and the seller makes an offer to contract by delivering the goods and the buyer accepts this offer by performing an act).

⁵⁷ CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland 3 July 1997] (transaction between a Dutch seller and Swiss buyer; buyer’s subsequent conduct interpreted as establishing buyer’s intent to conclude a contract).

⁵⁸ Landgericht Neubrandenburg, Germany, 3 August 2005, English translation available on the Internet at www.cisg.law.pace.edu (sour cherries, applying article 55 to the several possible interpretations: determinable price under article 14 or open price contract under article 55; but also finding that the price was impliedly agreed upon the acceptance of the first partial delivery and the invoice issued).

⁵⁹ Landgericht Neubrandenburg, Germany, 3 August 2005, English translation available on the Internet at www.cisg.law.pace.edu (see full text of the decision).