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The Limits of Buyer Protection under the CISG: An SME Perspective

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Abstract

This article critically evaluates whether the United Nations Convention on Contracts for the International Sale of Goods (CISG) provides adequate protection for micro and small enterprise (SME) buyers in international business-to-business (B2B) transactions. The CISG is founded on the assumption that commercial parties possess comparable bargaining power, legal expertise, and capacity to safeguard their interests. However, this assumption increasingly diverges from commercial reality, as micro and small enterprises participate more actively in cross-border trade. Focusing on key provisions governing nonconformity and remedies, including Articles 35, 38, 39, 47, and 49, the article demonstrates that the CISG's strict notice requirements, indeterminate legal standards, and reliance on judicial discretion can impose disproportionate procedural and legal burdens on SME buyers.Brief comparative reference to English law illustrates that, although domestic legal frameworks may offer greater doctrinal certainty in some respects, they similarly fail to recognise the structural vulnerability of SME buyers. The article contributes to existing scholarship by shifting focus from abstract doctrinal balance to the

practical impact of CISG rules on vulnerable business participants. The article concludes by proposing recognition of SME buyers as a distinct category in international sales law.

Keywords : CISG, English law, SME protection, international sales, buyer remedies, comparative law

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1 Introduction

This paper mainly focuses around investigating how the United Nations Convention on Contracts for the International Sale of Goods (CISG)[1] safeguards the interests of (SME) buyers in international Business to Business transactions (B2B). The law treats B2B contracts differently from Business to Consumer contracts (B2C), based on the assumption that the parties involved in B2B agreements possess sufficient commercial knowledge to understand the risks. However, SME buyers may lack the expertise of experienced commercial buyers, a gap that existing legal frameworks often overlook in favour of consumer protection.[2] SME buyers are typically enterprises with fewer than 10 employees and limited turnover.[3] Like consumers, SME buyers usually lack in-house legal expertise, bargaining power, and experience in negotiating complex commercial contracts. This problem is especially prevalent in cross-border transactions. Therefore, they should be awarded heightened protections like those given to consumers because they often share comparable vulnerabilities.

Treating them as commercially sophisticated simply because they operate as businesses overlooks their practical limitations. In international sales governed by frameworks like the CISG, SME buyers face significant challenges such as complying with strict notice requirements[4] and understanding ambiguous legal provisions. These burdens mirror the issues consumers face, yet

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[1] United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 (CISG).

[2] Neda B Marvasti et al. 'Is This Company a Lead Customer? Estimating Stages of B2B Buying Journey' (2021) 97 *Industrial Marketing Management* 126, 127.

[3] *Cambridge Dictionary*, 'Microbusiness' https://dictionary.cambridge.org/dictionary/english/microbusiness accessed 25 July 2025.

[4] CISG art 39.

consumer protection laws often exclude them solely due to their legal status as "businesses."

The UNIDROIT Principles which shelter all classes of international sales transactions, unlike CISG which exclusively governs international sale of goods transactions, rejects the universal postulation that businessmen are always experienced professionals with equal degree of bargaining power.[5] Since one - shareholder companies qualify within the definition of a business entity,[6] the practical difference between SME buyers and consumers involved in commercial transactions will not be upheld theoretically.

This paper contributes to existing legal scholarship by drawing attention to the overlooked category of SME buyers in international B2B transactions. It challenges the assumption that all business buyers are commercially sophisticated and highlights how e-commerce and simplified incorporation have expanded this category to include vulnerable entities. The paper also identifies judicial discretion (not jurisdiction) as the key cause of inconsistent CISG application, particularly under Articles 38 and 39. By proposing a redefinition of business buyers into micro, SME, and professional categories, the paper offers a novel framework for future legal reform and improved buyer protection mechanisms.

The paper undertakes a brief comparison between English law and the CISG in the final section. Unlike the CISG, English law relies on a domestic framework characterised by greater doctrinal certainty and remains a frequently used benchmark in comparative sales law. The comparison is not intended to determine which system is universally superior. Instead, it seeks to assess

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[5] Michael Joachim Bonell 'The CISG, European Contract Law and the Development of a World Contract Law' (2008) 56 *The American Journal of Comparative Law* 1, 3.

[6] *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL).

whether the challenges faced by SME buyers arise from the CISG itself or from a broader failure of commercial sales law which failts to recognise the distinct vulnerabilities of smaller business entities. By comparing the two regimes, the paper evaluates whether greater legal certainty translates into stronger practical protection for SME buyers.

2 Structural vulnerability of SME buyers in international trade

According to the United Nations Commission on International Trade Law, small to medium-sized businesses and traders in developing nations are seen as the primary beneficiaries of the CISG, as they often have limited access to legal services during contract negotiations and are vulnerable to issues arising from a lack of legal knowledge.[7] The United Nations Commission on International Trade Law recognized the potential existence of weaker parties in contracts who might struggle to understand and balance their rights.[8] As such, the commission expected the CISG to serve as a regulatory framework that would balance the interests of both sellers and buyers in international sales agreements. However, existing literature appears to challenge this view.

CISG's boundaries are confined to B2B transactions.[9] B2B transactions are defined as dealings between two enterprises. The term "business" lacks a definition and law finds it undesirable to exhaustively define the term.[10] This

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[7] United Nations Commission on International Trade Law, *The United Nations Convention on Contracts for the International Sale of Goods* (UNCITRAL 2020).

[8] *Ibid.*

[9] Rouven F Bodenheimer and Axel Benjamin Herzberg 'Commercial CISG'(*Changing Perspectives*) <https://www.changing-perspectives.legal/commercial/types-of-contracts/sale-of-goods/cisg/> accessed 28 February 2026.

[10] *LexisNexis Legal Glossary*, 'Business' <https://www.lexisnexis.co.uk/legal/glossary/business#:~:text=The%20following%2C%20amongst%20other%20thi ngs,role%20of%20an%20investor%3B%20the> accessed 28 February 2026.

lacuna has resulted in the inability to define B2B transactions. Thus, sole traders, single shareholder and multinational companies are considered B2B businesses. Legislation predominantly focuses on protecting consumer buyers, and the presumed sophistication and experience attached to B2B buyers have resulted in lack of protection to B2B buyers coming from unsophisticated backgrounds.

According to the UK Department for Business and Trade, micro-businesses (0 to 9 employees) make up 95.5% of the total UK business population.[11] Hence there are over 5.5 million businesses as of 2023.[12] The Companies Act 2006 was a major legislative reform that simplified company formation to promote entrepreneurship which contributed to this exponential rise. It also expanded the legal category of "business buyers" to include many entities lacking commercial or legal sophistication. In parallel, the OECD (2022) reports that digitalisation in e-commerce has made international trade more accessible to SMEs but also exposed them to higher transactional risks due to limited legal capacity and lack of face-to-face interaction.[13]

Moreover, a 2020 UNCTAD survey on the impact of COVID-19 on e-commerce found that 42% of small firms began or expanded online selling without adequate legal knowledge of cross-border protections.[14] These businesses though classified as "professional" buyers under instruments like the CISG, often mirror consumers through their behaviour and resource limitations. The European Commission has also recognised that SMEs face barriers in cross-

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[11] Department for Business and Trade, *Business Population Estimates for the UK and Regions: 2023* (2023) <https://www.gov.uk/government/statistics/business-population-estimates-2023> accessed 25 July 2025.

[12] *Ibid*.

[13] OECD, *SME and Entrepreneurship Outlook 2022* (OECD Publishing 2022) <https://www.oecd.org/industry/sme-outlook/> accessed 25 July 2025.

[14] UNCTAD, *COVID-19 and E-commerce: A Global Review* (2021) <https://unctad.org/webflyer/covid-19-and-e-commerce-global-review> accessed 25 July 2025.

border enforcement and suffer from a lack of information on legal rights.[15] These trends collectively demonstrate that the legal definition of "business buyer" no longer aligns with the practical realities of many market participants. Thus, the rise of micro-businesses and digital trade resulted in the dilution of the effectiveness of buyer protections that were originally designed for more sophisticated entities.

The reduced focus on B2B buyers in international sales contracts can be understood in the context of the past, when the internet was still developing, and business startup regulations were stricter. However, today, many economies have simplified these rules to support smaller businesses, highlighting the need for updated considerations in protecting B2B buyers. For example, the introduction of the Companies Act 2006 in England and Wales greatly simplified the process of incorporating a business entity. The Act adopted a "think small first" approach, aiming to create rules that are suited for smaller businesses, while larger corporations could continue to navigate their more complex requirements.[16] This led to the rise of small private entities.

It has become increasingly important to protect the interests of business buyers, particularly those who may be misunderstood or overshadowed by the term "company." These buyers may not fully grasp the negative aspects of operating a business entity through a company, making the need for clearer protections more relevant today.

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[15] European Commission, *Evaluation of the Small Business Act for Europe* COM(2015) 550 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0550> accessed 25 July 2025.

[16] Jonathan Hardman and Guillem Ramirez Santos 'Empirical Evidence for the Continuing Need to 'Think Small First' in UK Company Law' (2023) 24 *European Business Organization Law Review* 117, 118.

Wolfel and Grosse-Ruyken's article highlights how literature often overlooks the impact of power imbalances on suppliers.[17] This paper argues that this focus is less critical because, if suppliers meet their contractual obligations by delivering quality goods on time, then, buyers typically have no opportunity to act opportunistically. In contrast, sellers have more opportunities to exploit the power imbalance, such as by disguising the true quality of goods. Awarding consumer-style protection would help level the playing field. This is especially critical in the digital economy. Presently, the advancement of technology facilitates microbusinesses to engage in high-risk online transactions without the safeguards afforded to individual consumers. Extending consumer-like protection to SME buyers would not only promote fairness but also encourage entrepreneurship.

This article focuses specifically on buyers because the principal difficulties examined arise from obligations imposed upon buyers under the CISG rather than sellers. Articles 38 and 39 require buyers to inspect goods within a reasonable time and provide timely notice of non-conformity, failing which they may lose access to otherwise available remedies. These provisions place a disproportionate burden on SME buyers, who often lack the legal, technical, and financial resources needed to comply with complex procedural requirements in international transactions. By contrast, sellers are not exposed to equivalent procedural barriers that may result in the forfeiture of substantive rights.

It is worth noting that B2B contracts do not receive the same level of protection as B2C contracts. For instance, certain terms in B2C contracts may be deemed invalid under English Law due to unfairness,[18] but such protections do

[17] Joachim Wölfel and Pan Theo Grosse-Ruyken 'Bilateral Opportunism in Buyer–Supplier Partnerships' (2020) 27(3) *Journal of Business-to-Business Marketing* 247, 248.

[18] Consumer Rights Act 2015 s 62(4).

not apply to B2B contracts. The legal protection for B2B buyers is further reduced in international supply contracts because provisions in the Unfair Contract Terms Act 1977 (UCTA) do not apply to these agreements.[19] For example, in the case of *Phoenix Interior Design Limited v Henley Homes Plc*, an exclusion clause in a B2B contract was deemed ineffective because it failed to meet the reasonableness test under UCTA.[20] The supplier attempted to wholly exclude liability for defects if the customer failed to pay for goods. However, when the customer withheld payment upon discovering that the goods were defective, the supplier was not allowed to invoke the exclusion clause to avoid liability due to the application of UCTA. If this had been an international sales contract, the buyer would have had no legal recourse, as UCTA 1977 would not apply.

In B2C contracts, sellers are often legally prohibited from limiting their liability for certain breaches, whereas similar clauses in B2B contracts may still be valid. Laws in many jurisdictions, including those in England and international conventions like the CISG, provide some protection for B2B buyers from seller abuses. However, the question arises whether such protections are adequate in today's digital economy, where businesses are no longer limited to larger companies.

Some B2B buyers, particularly smaller entities, may require broader protection from sellers who often have greater bargaining power. Consumers typically lack negotiating power when entering contracts,[21] but B2B buyers could negotiate specific terms. For instance, it is legally possible to include contractual terms that are not explicitly written in the contract. Despite this negotiating

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[19] Unfair Contract Terms Act 1977 s 26.

[20] *Phoenix Interior Design Ltd v Henley Homes plc* [2021] EWHC 1573(QB).

[21] Thomas C Kaiser 'Negotiating with a Customer You Can't Afford to Lose' (*Harvard Business Review*, November 1988) < https://hbr.org/1988/11/negotiating-with-a-customer-you-cant-afford-to-lose > accessed 14 June 2025.

capacity, SMEs operating as B2B buyers, often lack the knowledge to fully leverage this opportunity to protect their interests. In B2B contracts, the rights and liabilities of each party are often more heavily negotiated than in consumer contracts, which can be complex and difficult for small business owners to navigate. While consumer contracts often use standard templates,[22] B2B contracts are more tailored. Therefore, concerns of B2B buyers, particularly small businesses, need to be carefully reviewed and addressed, with particular attention to the size of the business.

3 CISG provisions and their effect on SME buyers

3.1 Doctrinal Balance vs Commercial Reality: Where Do SME Buyers Stand?

Luiz Moser's global survey assessing parties perceptions prior to choosing a governing law identified lawyers perceiving CISG as a choice which is needlessly benevolent towards buyers as a reason for excluding it from sales contracts.[23] Schwenser and Hachem in their research discovered German legal practitioners viewing CISG as extremely buyer-oriented owing to its employment of Anglo-American concepts such as strict liability and the notice requirement.[24] These conflicting ideas represent the current debate surrounding whether the CISG is buyer-friendly or seller-friendly but do not engage with the question of how the CISG impacts SME buyers.

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[22] *Ibid.*

[23] Luiz Gustavo Meira Moser 'Parties' Preferences in International Sales Contracts: An Empirical Analysis of the Choice of Law' (2015) 20 *Uniform Law Review* 19, 20.

[24] Ingeborg Schwenzer and Pascal Hachem 'The CISG – Successes and Pitfalls' (2009) 57 *The American Journal of Comparative Law* 457, 471.

Uniform laws like the CISG are designed to balance the duties and obligations of buyers and sellers in international sales contracts.[25] However, parties to these contracts often resist applying national law, as it could provide an advantage to the party domiciled in that jurisdiction, enabling them to access legal advice and act strategically, even potentially masking breaches of contract. Spagnolo state that unfamiliarity with the CISG is a reason many counsels opt out of its provisions.[26]

Article 30 of the CISG outlines the seller's obligation to deliver goods, relevant documents, and transfer property in the goods as per the contract or the convention.[27] Similarly, Article 53 mandates the buyer to pay the agreed price and take delivery of the goods.[28] These provisions seem to balance the rights of both parties at the beginning and end of a contractual agreement. If the seller fulfils their obligations and the buyer accepts and pays for the goods, both parties' rights will be protected, and the effectiveness of the CISG in balancing their rights may not be questioned.

However, these initial provisions assume that business parties are equally knowledgeable and fair, which is not always the case. CISG's provisions related to buyers' rights against nonconforming goods or breach of contract by the seller provide an opportunity to assess how well it protects SME buyers from potential abuse. Articles 35 to 44 focus on nonconforming goods, and Articles 45 to 52

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[25] Herbert Lazerow 'Uniform Interpretation of CISG' (2019) 52(3) *The International Lawyer* 369, 387.

[26] Lisa Spagnolo 'Green Eggs and Ham: CISG, Path Dependence, and the Behavioural Economics of Lawyers' Choice of Law in International Sales Contracts' (2010) 6(2) *Journal of Private International Law* 417, 422.

[27] CISG art 30.

[28] *Ibid* art 53.

address remedies available to buyers when facing issues like non-delivery or lack of conformity.[29]

3.2 Article 38 and the "Short Period" Dilemma: Efficiency or SME Risk?

Article 35 specifies that the seller must deliver goods that match the contract's quantity, quality, and description, and that are packaged as agreed. Goods are considered nonconforming if they do not meet these standards or are not fit for the intended purpose.[30] Further, goods are considered nonconforming if they are not fit for their ordinary or intended purpose, fail to match the quality of a sample, or are improperly packaged.[31] However, if the buyer agrees to receive nonconforming goods or is aware of the nonconformity when the contract is made, the seller is not liable for the actual nonconformity.[32] While the CISG includes implied terms like satisfactory quality and description, it also respects party autonomy by allowing deviations from these terms if agreed upon by both parties.[33] If a buyer knowingly consents to nonconforming goods, it can be argued that this exclusion of liability is not a violation of the buyer's interests, as it reflects the buyer's agreement. SME buyers are often in a weaker negotiating position in this situation. They may feel pressured to accept nonconforming goods clauses to secure supply relationships, especially when dealing with dominant suppliers. Although party autonomy allows buyers to agree to such terms, SMEs are more likely to agree without fully appreciating the commercial and legal risks involved.

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[29] *Ibid* art 35 to 52.
[30] *Ibid* art 35.
[31] *Ibid*.
[32] *Ibid* art 35(3).
[33] *Ibid* art 6.

The issue arises when a buyer receives nonconforming goods that they neither consented to nor were aware of at the time of the contract. Article 36(1) of the CISG holds the seller liable for delivering nonconforming goods that exist at the time the risk is transferred to the buyer.[34] However, Articles 38 and 39 impose practical requirements that the buyer must meet to hold the seller liable for nonconformity.[35] In practice, many CISG-related litigations revolve around non-conforming goods,[36] revealing that commercial transactions often deviate from the ideal scenario where both parties fulfil their obligations.

Article 38, mandates that buyers must examine the goods upon receipt to retain their right to remedies for nonconformity.[37] This requirement ensures that nonconformity is identified at the point of risk transfer from the seller to the buyer, preventing sellers from being held liable for issues that arise after delivery. This provision can be a balanced mechanism, as it provides protection for both parties since buyers are able to confirm the seller's breach, and sellers are shielded from unjust claims.

However, the time constraints set by Article 38 are problematic for buyers. Article 38 specifies that buyers must examine the goods with/in a "short period" and notify the seller of any nonconformity.[38] While this provision facilitates the swift resolution of disputes, it creates a potential injustice for buyers, especially when the goods are complex or require extensive inspection. For example, inspecting sophisticated goods like airplanes may require significantly more time than inspecting simpler goods. The narrow time frame for examination may

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[34] *Ibid* art 36(1).
[35] *Ibid* arts 38, 39.
[36] Amy H. Kennedy 'Recent Developments: Non-Conforming Goods under the CISG – What's a Buyer to Do' (1998) 16 *Dickinson Journal of International law* 319, 323.
[37] CISG art 38.
[38] *Ibid*.

prevent buyers from thoroughly assessing the goods and, if they fail to notify the seller within the specified period, they may lose their right to any remedy. Overall, Article 38 of the CISG can be both beneficial and challenging for SME buyers, but it is generally riskier for SMEs than advantageous in practical terms.

On the positive side, Article 38 helps SME buyers by requiring prompt inspection of goods, which can protect them from long-term disputes and ensure that sellers are held accountable for nonconformity discovered at the point of delivery. This can be useful for small businesses that need quick resolution of quality issues to maintain smooth business operations. However, the strict time requirement can be particularly harmful to SME buyers. Small businesses often lack specialised technical staff and advanced inspection facilities to properly examine complex goods within a short period. Unlike large commercial buyers, SMEs may struggle with detailed testing or quality verification, especially for technically complex products. If SMEs fail to notify sellers within the required timeframe, they risk losing legal remedies even if the goods are defective.

The critical issue here is whether the "short period" for examination, as prescribed in Article 38, should be flexible based on the nature of the goods. According to Ferrari, Article 38 should require immediate examination, which would ensure that any defects present at the point of delivery are identified.39 However, the uniformity of this short period fails to account for practical differences between types of goods. The time allowed to inspect sophisticated goods should arguably be more generous than for basic goods, as the complexity of the goods may require more time for an accurate inspection.

Case decisions on this matter would be essential to determine whether courts have recognized the need to adapt the time required for inspection to the

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[39] Franco Ferrari 'Divergence in the Application of CISG's Rules on Nonconformity of Goods' (2004) 68(3) *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 473, 478.

nature of the goods involved. While the provisions of the CISG, particularly those related to examination and notification of nonconformity, seem to balance the interests of both parties, a strict application of the "short period" for inspection creates potential disadvantages for all forms of buyers, including SMEs, especially those dealing with complex goods.

In the case of *M SpA v N*, the buyer was allowed to claim damages for nonconformity despite not inspecting the goods immediately.[40] The court ruled that the buyer could only discover the defect after using the cooling installations for a sufficient period, emphasizing the need to consider the practical realities of the situation. The court's interpretation was not strictly formalistic; it recognized that the buyer should have had time to use the goods before uncovering the defect, thus considering the surrounding circumstances. Therefore, the court took a more flexible approach, recognizing that a "short period" for inspection should be adapted to the specific circumstances of the case.

Contrastingly, in the case of *Roelants B.V v Beltronic Engineering*,[41] a Belgian buyer received defective rolls and refused to pay after complaints from clients. The court held that the buyer failed to examine the goods as soon as possible and did not give timely notice of the nonconformity. The defects, such as bad printing and perforations, were easily discoverable, so the court concluded that the buyer should have inspected the goods promptly. The court's reasoning also considered the surrounding circumstances, such as the buyer's uncertainty about the quality of previous deliveries. Given these facts, the court found it reasonable to expect the buyer to inspect the goods more promptly and notify the seller of any defects.

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[40] *M SpA v N* (Rechtbank van Koophandel Ieper (Belgium), 29 January 2001) (*M SpA*).

[41] *Roelants Eurosprint BV v Beltronic Engineering International BVBA (*Rechtbank van Koophandel Hasselt (Belgium), 6 March 2002, AR 01/2703).

These two cases show a contrast in the application of Article 38, highlighting that the CISG provides flexibility for courts interpreting the "short period" for inspection based on the specific circumstances of each case. The *M SpA* case[42] demonstrates a buyer-friendly, flexible approach, while *Roelants B.V* illustrates a stricter,[43] more formal interpretation that aligns with the convention's requirement for timely inspection and notification. The differing judicial interpretations of Article 38 highlight the complexity of balancing buyer and seller interests under the CISG, and the importance of contextual factors in determining the rights and responsibilities of parties.

The interpretation of Article 38 of the CISG has sparked considerable debate regarding its fairness, particularly in balancing the interests of buyers and sellers. The case law highlights that a strict interpretation of the Article can sometimes lead to outcomes that disadvantage buyers, particularly in situations where the goods are complex or technical. For example, in a German case, the buyer discovered that two engines were non-conforming and sent them to a university for confirmation.[44] However, the court imposed a duty on the buyer to inspect the goods within a few working days, ignoring the fact that the engines were highly technical and required more time for proper inspection. This strict adherence to a short inspection period did not consider the complexity of the goods, which highlights a flaw in how Article 38 is often applied in certain jurisdictions, especially in Germany.

[42] *M SpA* (n 40).
[43] *Roelants Eurosprint* (n 41).
[44] *LG Düsseldorf* 31 O 231/94 (23 June 1994, Germany).

This case contrasts with the more lenient approach taken by courts in France[45] and Belgium,[46] where judges consider the practical circumstances surrounding the inspection of goods.

Kennedy argues that courts should be more lenient towards buyers by granting them a longer period to inspect goods if they can demonstrate diligence in doing so.[47] This perspective holds merit, especially considering the complex nature of some goods, such as highly technical machinery. While Kennedy's suggestion to extend the inspection period may appear fair, it must be noted that Article 38 already mandates courts to consider practical circumstances when determining the time frame for examination. The cases from Germany, however, demonstrate a strict and formalistic approach that does not account for the nature of the goods or the buyer's ability to conduct a thorough inspection in a short time frame.

The conflict between jurisdictions that interpret Article 38 strictly (like Germany) and those that prioritize practical considerations (like France and Belgium) shows a divergence in how the CISG's provisions are applied. Thus, the debate surrounding CISG Article 38's interpretation underscores the tension between legal formality and the need for flexibility to accommodate the complexities of international commerce, particularly when it comes to safeguarding the interests of business buyers, especially those dealing with sophisticated or technical goods.

3.3 Timely and Adequate Notice under the CISG

Under Article 39 of the CISG, buyers are required to give notice of any

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[45] *Roger Caiato v Société Française de Factoring International Factor France* (Cour d'appel de Grenoble (France) Chambre Commerciale, 13 September 1995, no 48992) (*Roger Caiato*).
[46] *M SpA* (n 40).
[47] Kennedy (n 36) 326.

nonconformity within a "reasonable time" after discovering the defect.[48] Failure to do so results in the buyer losing the right to claim nonconformity and may lead to an obligation to pay the purchase price with interest.[49] Like Article 38, which requires buyers to examine goods within a "short period,"[50] the definition of "reasonable time" in CISG Article 39[51] is ambiguous, and determining what constitutes too late for providing notice is contentious

The notice requirement of CISG is viewed by some as a heavy burden placed on the buyer,[52] whereas others, especially German practitioners view it as a buyer friendly provision.[53] However, the question of how this may affect SME buyers has not been previously assessed. Kennedy views the notice requirement as a heavy burden placed on buyers.[54] If the seller intentionally delivers nonconforming goods to the buyer, he is precluded from benefiting from the notice requirement.[55] Therefore, Schwenzer and Hachem are of the view that both criticisms cancel each other out, suggesting that the CISG achieves reasonable results for both parties.[56] However, this debate results in a stalemate situation. Despite the heavy criticism placed on CISG's notice requirement, academics such as Treitel criticise English law for not incorporating a similar provision because he views the lack of notice as giving an opportunity for buyers to terminate the contract based on trivial nonconformities whilst opportunistically benefiting from the easy termination afforded by the English law regime.[57]

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[48] CISG art 39.
[49] *Ibid*.
[50] *Ibid* art 38.
[51] *Ibid* art 39.
[52] Kennedy (n 36) 323.
[53] Schwenzer and Hachem (n 24) 476.
[54] Kennedy (n 36) 323.
[55] Schwenzer and Hachem (n 24) 473.
[56] *Ibid*.
[57] G H Treitel and Edwin Peel, *Treitel on Law of Contract* (13th edn, Sweet & Maxwell 2011) 257.

In *Chicago Prime Packers v Northam Food Trading*, the United States District court addressed the issue of what constitutes a "reasonable time" under Article 39 of the CISG for providing notice of nonconformity.[58] The court emphasized that determining reasonable time is a factual matter, requiring consideration of various factors like customs and past practices. Since neither party provided sufficient evidence to clarify what "reasonable time" meant in this case, the court dismissed the motions for summary judgment, highlighting the importance of these factors in determining the appropriate timeframe.

In contrast, in a *LG München*, 10 HK 2375/94 (Germany),[59] the court ruled that a buyer's delay of twenty days in appointing an expert was unreasonable, even though the buyer may have needed additional time to assess the goods. This decision illustrates a stricter approach to interpreting the "reasonable time" requirement, focusing on the timeliness of notice without considering the buyer's need for additional time to evaluate the nonconformity. This judgment did not adequately consider the practical challenges faced by the buyer, such as the need to defrost the goods and find an expert during the busy Christmas period.

The court's strict interpretation of "timely notice" left little room for flexibility based on the circumstances, which could be particularly detrimental to SME buyers. These businesses may not fully understand the technicalities of notice requirements under CISG, putting them at a disadvantage if they are held to strict time limits that do not account for the complexities of the goods or market conditions.

This issue highlights the different ways courts interpret the concept of "reasonable time" for inspection and notice under the CISG. Some jurisdictions apply a strict approach, where any delay beyond a few days is considered

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[58] *Chicago Prime Packers Inc v Northam Food Trading Co* 408 F 3d 894 (7th Cir 2005).
[59] *LG München*, 10 HK 2375/94 (20 March 1995, Germany).

unreasonable, while others adopt a more lenient view.[60] In *Caiato*, the court ruled that a notice given one-month after discovering defects was reasonable, acknowledging the practical realities involved in inspecting goods like cheese.

If the judges in *Caiato* had decided the German case, they may have ruled in favour of the buyer, as they were willing to allow up to a month for the discovery of defects in a perishable good. This highlights the inconsistency across jurisdictions in interpreting what constitutes a "reasonable time" under Article 39,[61] and the potential disadvantage to buyers, particularly small businesses, in jurisdictions with a more rigid approach.

The key protective mechanism for buyers under the CISG is the requirement to provide effective notice of nonconformity. As demonstrated in previous analyses, the interpretation of Articles 38[62] and 39 of the CISG[63] varies significantly across different jurisdictions and individual judges. If a buyer fails to provide an adequate notice, they lose critical rights, such as the right to claim damages,[64] request performance of the contract,[65] demand avoidance,[66] and seek a reduction in the purchase price.[67] Additionally, Article 39(2) limits the time a buyer can raise the issue of nonconformity to two years from receiving the goods, though it allows courts to extend this period based on specific circumstances.[68]

This variability in the interpretation of CISG provisions creates uncertainty for buyers, as the drafters intentionally designed flexible language to accommodate different legal systems while allowing them to maintain their

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[60] *Roger Caiato* (n 45).
[61] *Ibid*.
[62] CISG art 38.
[63] *Ibid* art 39.
[64] *Ibid* art 74.
[65] *Ibid* art 46.
[66] *Ibid* art 49.
[67] *Ibid* art 50.
[68] *Ibid* art 39(2).

sovereignty. In this context, whether the CISG adequately protects buyers depends on the courts' approach to interpreting these provisions.

The situation is further complicated by the significant burden placed on the buyer regarding the content of the notice. Article 39 only requires the notice to specify the nature of the defect, but it offers no clear guidance on the specifics of what should be included.[69] While large corporations or multinational buyers with access to legal expertise can navigate this, SME buyers may struggle with just the CISG text, potentially leading to misunderstandings. In the *Namur v Wesco* case, a buyer of cotton fabrics lost the right to rely on nonconformity because their notice simply mentioned "bad quality" without detailing the nature of the defect, which the court deemed insufficient.[70] This highlights the challenges faced by buyers, especially SMEs in complying with CISG requirements.

As highlighted, even if a buyer provides timely notice, courts may still require more detailed information about the defect than what the buyer might reasonably expect. This is especially challenging for buyers who do not have professional legal advice and may assume that a simple description, such as "bad quality," would suffice. In contrast, courts, as seen in the German case, expect more specific details like the type of goods, delivery date, and serial number, which adds complexity to the notice process.[71]

The drafters of the CISG did not intend to impose such a heavy burden on buyers, as evidenced by a commentary stating that buyers are not expected to

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[69] *Ibid* art 39.

[70] *Namur Kredietverzekering v Wesco* (Rechtbank van Koophandel Kortrijk (Belgium), 16 December 1996, No 8336). (*Namur v Wesco*).

[71] *Landgericht Stuttgart*, 3 KfH O 97/89 (31 August 1989, Germany). (*Landgericht Stuttgart*).

conduct exhaustive inspections that would uncover every possible defect.[72] However, courts have often interpreted the notice requirement more strictly, leaving buyers with less protection than the convention might have intended. To address this, scholars like Honnold suggest that courts should consider various factors when determining the reasonableness of the notice, including the nature of the goods, whether independent inspection is required, the seller's ability to cure the defect, the ease of examining the goods, and the remedy the buyer is seeking.[73]

While the CISG provides mechanisms to protect buyers, the practical application of these provisions, especially concerning timely and adequate notice, depends heavily on jurisdiction and judicial interpretation. This inconsistency can place an undue burden on buyers, particularly small businesses, who may struggle to meet the strict notice requirements set by courts.

In *Sport D'Hiver v Ets. Louys et Fils*, the court ruled that the buyer's 23-day delay in notifying the seller of the defect was unreasonable, given the defect was easily discoverable (wrong sizes).[74] However, in *Caiato v Societe Francaise*, the court allowed a one-month delay to identify the defect in perished cheese, despite both cases involving easily noticeable issues.[75] These contrasting rulings show that interpretations of CISG provisions can vary significantly, making it unpredictable for both parties. Some courts use an equitable approach, considering various factors, while others strictly adhere to formal interpretations.

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[72] CISG Advisory Council 'Examination of the Goods and Notice of Nonconformity Articles 38 and 39' (Opinion No 2, 7 June 2004) < https://cisgac.com/opinions/cisgac-opinion-no-2/> accessed 17 June 2026.

[73] John O Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (Kluwer Law International) <https://iicl.law.pace.edu/sites/default/files/cisg_files/honnold.html> accessed 1 March 2026.

[74] *Sport d'Hiver di Geneviève Culet v Ets Louys et Fils* (Tribunale Civile di Cuneo (Italy), 31 January 1996) No 45/96).

[75] *Roger Caiato* (n 45).

In general, the above suggests that CISG Articles 38 and 39 both protect and disadvantage SME buyers, but the overall effect tends to be riskier for SMEs than for large commercial buyers. On the protective side, the CISG provides flexibility by allowing courts to consider the nature of the goods and commercial circumstances when determining what constitutes a "short period" for inspection or a "reasonable time" for notice. Cases such as the Belgian decisions[76] show a buyer-friendly, pragmatic approach, which can benefit SMEs dealing with complex or technical goods.

However, the provisions can also disadvantage SME buyers. The ambiguity of terms like "short period" and "reasonable time" creates legal uncertainty. SMEs often lack resources, making it easier for them to lose their right to remedies due to procedural technicalities rather than substantive defects in goods. The notice requirements can also be particularly burdensome for SMEs. Courts sometimes demand detailed technical descriptions of defects, which may be difficult for small businesses without legal or technical support. As shown in the German cases,[77] strict interpretations can bar claims even where buyers acted in good faith but failed to meet strict formal standards.

Overall, while the CISG aims to balance interests, its practical application can create disproportionate risks for SME buyers compared to large commercial buyers, particularly in jurisdictions that adopt strict interpretations.

It must be highlighted that Articles 38 and 39 promote efficiency by requiring prompt inspection and notice. However, this trade-off operates differently across market participants. Large commercial buyers are well equipped to comply with these requirements, whereas SME buyers are more likely to lose their rights due to procedural non-compliance.

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[76] *Namur v Wesco* (n 70).
[77] *Landgericht Stuttgart* (n 71).

3.4 Balancing Remedies or Shifting Risk? The CISG from an SME Perspective

CISG offers a range of remedies to buyers, with specific performance being the most prominent.[78] This remedy is based on the idea that sellers should be compelled to fulfil their contractual obligations. Zahraa and Ghith's article highlights how UNCITRAL and scholars support specific performance, emphasizing its benefits like holding the seller accountable, easing the buyer's search for similar goods, and reducing litigation costs.[79] However, there is an opposing view that specific performance can be burdensome to the buyer, as it may be as costly and time-consuming as litigation itself.[80]

In *Styles v Movie Star*[81], the buyer paid for a vintage car, but the seller refused to deliver it. Despite the contract being governed by the CISG, the court considered Florida law to determine the appropriate remedy. The court ultimately granted specific performance under both CISG and Florida law. While specific performance is discretionary under Florida law, it is considered a primary remedy under the CISG. Although Articles 46 and 62 of the CISG formally recognise specific performance as a primary remedy, this principle is qualified by Article 28. Article 28 provides that a court is not bound to order specific performance unless it would do so under its own domestic law in respect of similar sales contracts. Consequently, the practical availability of specific performance under the CISG depends largely on the law of the forum. Therefore, the case demonstrates that specific performance under the CISG is not an

[78] CISG art 46.

[79] M Zahraa and A Ghith 'Specific Performance in the Light of CISG, the UNIDROIT Principles and Libyan Law' (2002) 7(3) *Uniform Law Review* 753.

[80] Pontian Okoli 'A Case for Reviewing the System of Remedies under CISG' (2011) 22(6) *International Company and Commercial Law Review* 245.

[81] *Styles v Movie Star Musclecars Inc* 2017 Fla Cir LEXIS 9983 (Fla Cir Ct 2017).

absolute buyer remedy but one whose effectiveness depends upon the extent to which domestic law recognises and enforces it.

This shows that CISG does not automatically enforce specific performance without regard for the buyer's interests. Instead, the combination of CISG and local law provides a balanced approach to determining the most suitable remedy, a point that is often overlooked in scholarly analysis of the interaction between Articles 28 and 46 of the CISG.

This case supports the use of specific performance, particularly because of the unique nature of the antique car. Enforcing the seller's obligations helped the buyer avoid the impossible task of finding a similar vintage car, thereby safeguarding the buyer's rights. The judgment in *Styles v Movie Star*[82] may benefit SME buyers because it reinforces the strength of specific performance as a remedy under the CISG.

For SME buyers, this is particularly significant. Small businesses often lack market access to easily replace unique or scarce goods. In *Styles v Movie Star*, the vintage car was a unique item.[83] By granting specific performance, the court ensured that the buyer was not left with mere damage, which may be inadequate where substitute goods are unavailable or prohibitively expensive. Instead, the seller was compelled to deliver the exact goods contracted for.

In *Magellan v Salzgitter*, the court ruled that a buyer's request for specific performance could only be granted if the buyer proved it was difficult to obtain similar goods on the market.[84] Okoli examining the viability of CISG remedies commented negatively of all CISG remedies in the standpoint of buyers.[85] He specifically levels criticism against Article 47 of CISG, under which a seller who

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[82] *Ibid*.
[83] *Ibid.*
[84] *Magellan International v Salzgitter Handel GmbH* 76 F Supp 2d 919 (ND Ill 1999).
[85] Okoli (n 80).

doesn't execute his obligations within the timeframe can be given additional time to the detriment of the buyer. According to Torsello, seller is prohibited from using this provision for his fragmented performance,[86] but Okoli cite Article 51(1) to prove the ability of a partially performing seller to benefit from this Article.[87] Schwenzer and Fantoulakis are critical of s51(1) for providing the possibility to separate delivered goods into parts.[88] Under English law, if the seller fails to perform his side within the agreed period, nothing in this world could prevent him from being punished for his fault. Formulating confidence among sellers to extend the period of performance will create uncertainty amongst buyers to the extent of jeopardizing their smooth trade.

This position negatively affects SME buyers more than large commercial buyers because small enterprises usually depend on timely performance for maintaining cash flow and operational stability. Under CISG Article 47, allowing sellers to request additional time to perform their obligations may place small buyers in a vulnerable position, as they often lack the financial reserves to tolerate delayed deliveries. Okoli's reliance on Article 51(1), which allows partial performance to be treated separately, may further weaken buyer protection by enabling sellers to deliver goods in stages, prolonging contractual uncertainty.[89] While larger commercial buyers may have greater capacity to manage delayed or fragmented performance, small businesses are more likely to suffer

[86] Marco Torsello 'Sales Law Beyond Sales Contracts: Applicability and Applications of the CISG to Non-Sales Transactions (The Case of Countertrade and Barter Transactions)' (2019–20) 38 *Journal of Law and Commerce* 286.

[87] Okoli (n 80).

[88] Ingeborg Schwenzer and Christiana Fountoulakis, *International Sales Law: A Guide to the CISG* (Hart Publishing 2014) <https://dokumen.pub/international-sales-law-a-guide-to-the-cisg-9781509919628-9781509919659-9781509919635.html> accessed 1 March 2026.

[89] Okoli (n 80).

operational disruption and increased transaction costs when seeking remedies for non-performance.

Schwenzer negatively comments on CISG provisions for allowing the seller an ability to remedy his breach within a reasonable time without causing unreasonable inconvenience to buyer.[90] The term "unreasonableness" has no clear definition. Same can be said about the concept of "fundamental breach". Peacock denominates the recourse to fundamental breach as the most controversial remedy of CISG.[91] Treitel condemned CISG terms for being indeterminate and imprecise.[92] The existing literature cites terms such as "fundamental breach", "good faith", "reasonableness" as such vague terms which makes CISG unsuitable for contracts, especially commodity transactions.[93]

Aforesaid vague terms used in CISG are not present in Sale of Goods Act 1979, which could be a reason why Aldershot and Ashgate[94] mention the disuse of CISG concepts of fundamental breach and good faith in English law as a reason for its certainty. Schlechtriem commented positively on CISG Article 49 for facilitating the buyer with an option to choose between avoidance or specific performance when seller's non delivery constituted a fundamental breach of contract,[95] however, Okoli denominate the cooperation of Article 47 and 49(1)(b) as creating a helpless buyer who is coerced to hold-up till seller make good his fault.[96] Though Schlechtriem and Okoli bear opposing views about Article 49,

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[90] Peter Schlechtriem and Ingeborg H Schwenzer (eds.), *Commentary on the UN Convention on the International Sale of Goods (CISG*) (4th edn, Oxford University Press 2010) 56.

[91] Darren Peacock 'Avoidance and the Notion of Fundamental Breach under the CISG' (2003) 8 *International Trade and Business Law Review* 95, 106 <https://cisg-online.org/files/commentFiles/Peacock_8_ITBLA_2003_95.pdf> accessed 1 March 2026.

[92] Treitel (n 57).

[93] Schwenzer and Hachem (n 24).

[94] John M Rojers, 'International Law and the United States Law' (1999) 93(3) *American Journal of International law* 531.

[95] Schlechtriem and Schwenzer (n 90).

[96] Okoli (n 80).

both perceive Article 47 as negative towards buyers, especially within fluctuating markets. Contrary to what Schlechtriem remarks, practically Article 49 do not give the buyer discretion to select the desired remedies, because if the avoidance amount to fundamental breach, buyer will not only suffer from sellers' nonconformity but will be guilty of breach of contract.

The language used in CISG can be viewed critically, but Zahraa commenting on the specific enforceability of English law governed international contracts, accused the test used to determine the "enforceability" for being vague.[97] Thus, both CISG and English law is tainted with language issues. Effort made by academics to bring precision to these terms often ended with a list of conditions which is far from a solution. SME buyers are less able to manage legal and commercial uncertainty. The vague terminology in the CISG, such as "unreasonableness", "fundamental breach" and "good faith", creates unpredictability in determining when buyers can successfully claim remedies or terminate contracts. Small businesses typically lack legal teams to interpret and litigate ambiguous legal standards, making them more vulnerable when disputes arise.

Additionally, provisions allowing sellers to remedy breaches within a reasonable time may specifically disadvantage SME buyers who rely on strict delivery schedules for inventory management. Larger commercial buyers are usually better equipped to absorb delays and negotiate contractual protections, whereas SME buyers may suffer.

Okoli criticizes the CISG remedy of price reduction, which allows a buyer to accept defective goods in exchange for a reduced price.[98] He argues that this

[97] Mahdi Zahraa and Aburima Abdullah Ghith 'Specific Performance under the Vienna Sales Convention, English Law and Libyan Law' (2000) 15 *Arab Law Quarterly* 304.
[98] Okoli (n 80).

remedy is unfavourable to the buyer because it assumes the buyer will still find the goods useful. This perspective is supported by a Belgian case in which a buyer of tomatoes refused to pay, claiming the tomatoes were too ripe for resale.[99] The court declared the tomatoes fit for resale and confined the buyer to the price reduction remedy, despite the tomatoes being unusable for the buyer's purpose. Okoli argues that this judgment overlooks commercial and practical realities, as the perishable nature of tomatoes meant the buyer was forced to pay at least a partial amount for goods that were already spoiled.[100] The criticism directed at the CISG's price reduction remedy (Article 50 of CISG) has significant implications for SME buyers.

Price reduction allows a buyer to retain non-conforming goods and reduce the price proportionately. In theory, this is a flexible and efficient remedy. However, as Okoli argues, it assumes that the buyer can still derive some commercial value from the defective goods.[101] This assumption can disadvantage SME buyers.

The Belgian tomato case illustrates the problem.[102] The buyer argued that the tomatoes were too ripe for resale, but the court found them objectively fit for resale and limited the buyer to price reduction. From a strict legal perspective, the goods retained some value. However, commercially, perishable goods lose value rapidly. For a small or medium-sized enterprise, particularly one operating on thin margins, the inability to resell the goods immediately may mean total loss, even if the goods are technically "usable."

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[99] *Rechtbank van Koophandel Mechelen* (18 January 2002) (Belgium).
[100] Okoli (n 80).
[101] *Ibid.*
[102] *Rechtbank van Koophandel Mechelen* (n 99).

Okoli further criticizes the CISG remedy that forces the buyer to give the seller additional time to fulfil their contractual obligations.[103] He argues that this puts the buyer in a vulnerable position, as they are left waiting without certainty, while the seller attempts to remedy the breach. This remedy can be problematic for the buyer, as there is no guarantee of success in the seller's efforts to fix the issue. Okoli sees this as an unfair burden on the buyer, who may end up in a prolonged situation with no assurance of a satisfactory resolution.[104] This can be particularly harmful to SME buyers because it leaves them in a state of uncertainty while the seller attempts to cure the breach. During this extended period, the buyer remains bound by the contract and may be unable to secure alternative goods, even though there is no guarantee that the seller will successfully perform. For SMEs operating with tight delivery schedules, such delays can result in lost commercial opportunities. Consequently, the mechanism may shift disproportionate risk onto SME buyers, who are less able to absorb prolonged uncertainty.

In a German case[105] involving a buyer of women's shoes, the buyer sought to avoid the contract due to delayed delivery and nonconformity of goods. The court ruled that the buyer must give the seller additional time to perform under Article 47 of the CISG. The court ordered the seller to pay the balance and interest. This judgment can be deemed reasonable because the short delay (two days) was negligible, and fixing an additional time for performance allowed the buyer to receive what was contracted for without significant loss.

In non-perishable goods cases, granting additional time helps both parties avoid costly litigation and provides a legal compromise, making the contract

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[103] *Ibid.*
[104] *Ibid.*
[105] *Oberlandesgericht Frankfurt am Main*, 5 U 15/93 (18 January 1994, Germany).

workable. While Okoli's concerns about the remedy are valid, in practice, if the seller fails to perform during the extended period, the buyer can still claim damages based on the difference in price between the contract and market value at the time of avoidance.[106] Thus, the additional time does not harm the buyer's rights materially. SME buyers are more harmed because they typically operate with narrower profit margins and less diversified supply chains than larger commercial buyers. Prolonged uncertainty during the additional performance period can disrupt operations and damage customer relationships.

The CISG limits the remedy of avoidance to cases of fundamental breach,[107] but as noted earlier, the term "fundamental breach" remains undefined, leading to ambiguity in determining when it applies. Okoli argues that a breach is not fundamental if the violation is remediable.[108] Case law supports this view, indicating that if the buyer can resell the goods at a lower price[109] or use them reasonably,[110] it would not be considered a fundamental breach.

Okoli criticizes the strict interpretation of "fundamental breach" in the CISG, viewing it as an unnecessary burden on buyers.[111] He argues that this approach makes contract termination almost impossible, particularly since reselling defective goods, even at a discount, is always a possibility.[112] Okoli believes that the unsettled nature of what constitutes a fundamental breach further complicates the situation for buyers.[113] The restriction of avoidance to

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[106] CISG art 74.
[107] *Ibid* art 25.
[108] Okoli (n 80).
[109] *Cobalt Sulphate* (Bundesgerichtshof, 3 April 1996, Germany) (*Cobalt Sulphate*).
[110] *Rotorex Corp v Delchi Carrier SpA* 71 F3d 1024 (2d Cir 1995).
[111] Okoli (n 80).
[112] *Ibid*.
[113] *Ibid.*

cases of "fundamental breach" under Article 25 of the CISG can significantly disadvantage SME buyers.

Because "fundamental breach" is narrowly interpreted and often excludes remediable breaches, SME buyers may be unable to terminate the contract even when the goods are commercially unsatisfactory. If a court finds that the goods can still be resold at a discount or put to some reasonable use, avoidance will likely be denied. For a small business , being forced to resell defective goods at a reduced price may eliminate profit entirely or even cause loss.

The ambiguity surrounding what constitutes a fundamental breach further increases legal uncertainty. SMEs generally lack the financial resources to engage in prolonged litigation to clarify their rights. As a result, they may feel compelled to accept defective performance rather than risk costly disputes. In practice, the strict threshold for avoidance may shift commercial risk onto SME buyers.

In *Lamina System v Coelin*, a Spanish buyer successfully sued for breach of contract when an industrial machine failed to function as specified in the agreement.[114] The court found this failure to be a fundamental breach, even though the buyer had the option to resell the machine. This contrasts with the *Cobalt Sulphate* case, which Okoli criticizes, where the court ruled that the buyer could not terminate the contract because they could resell the goods at a discount, thus preventing the breach from being considered fundamental.[115]

Okoli argues that forcing buyers to maintain business relations with a breaching seller is the consequence of the strict interpretation of "fundamental breach".[116] The analysis indicates that while the CISG generally aims to provide

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[114] *Lamina System AB v Coelian Asesoramiento SA* (Audiencia Provincial de Madrid (Spain), 22 March 2007) No 244/2007).

[115] *Cobalt Sulphate* (n 109).

[116] Okoli (n 80).

equitable remedies for both parties in international sales agreements, its provisions, such as those concerning the duration to examine goods and notice requirements, are sometimes interpreted in ways that bring justice, but in other instances, result in manifest injustice to the buyer. There is no inherent flaw within the CISG text itself, as it offers comprehensive rules to address issues in international sales. However, the uncertainty surrounding the interpretation of its provisions remains a significant concern that needs to be addressed.

Some academics argue that the CISG's rules on nonconformity and remedies favour the seller, though the real issue may be the individual judge's approach to interpreting the contract.[117] Sastry attributes the detest of the CISG to its ambiguities,[118] while these gaps were intentionally included by the drafters to allow judges to make more equitable decisions while respecting state sovereignty.

Where courts adopt a broader approach, as in *Lamina System v Coelin*,[119] SME buyers benefit because they can terminate the contract when goods fail to perform their essential purpose. For a small enterprise that purchases an industrial machine central to its operations, non-functioning equipment may halt production entirely. Termination allows the SME to seek an alternative supplier quickly and avoid ongoing operational losses. However, under the stricter approach reflected in the *Cobalt Sulphate* decision,[120] if the goods can technically be resold at a discount, the breach may not be considered fundamental. This disproportionately harms SME buyers. Being forced to resell defective goods at a reduced price may wipe out their profit margin or create cash-flow instability.

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[117] *Ibid*.

[118] D R V VL N Sastry, *English Sales Law v Vienna Convention on CISG* (1st edn, Blue Diamond Publishing 2020) 23.

[119] *Lamina System v Coelin* (n 114).

[120] *Cobalt Sulphate* (n 109).

Additionally, being compelled to maintain business relations with a breaching seller may expose SMEs to further risks, whereas large corporations are better equipped to renegotiate terms, or litigate.

The broader issue of interpretative uncertainty also impacts SMEs more severely. Large commercial entities can manage legal ambiguity through in-house counsel and risk allocation strategies. Thus, inconsistent case law on "fundamental breach" creates a heavier burden on SME buyers than on well-resourced commercial actors. Because outcomes depend heavily on individual judicial interpretation rather than clear, predictable standards, SMEs face greater legal uncertainty. SMEs could be more vulnerable since they often rely on the CISG as a default system because negotiating detailed contracts require in-house legal support which they may lack. The CISG is supposed to help SMEs by providing a uniform set of rules and reducing the need to understand foreign laws. However, challenges arise when interpretations given to CISG provisions conflict.

4 SME Buyers in International Sales: CISG versus English Law

With the rise of online shopping, the risk of encountering abusive sellers and nonconforming products has significantly increased. Long before the said types of e-commerce related problems, English law has introduced several buyer protection mechanisms that address issues such as receiving damaged goods, undelivered orders, and data theft. These protections are vital in fostering a safe and secure trading environment for buyers.

Historically, general buyer protection predated consumer protection. The Sale of Goods Act 1979 offered general protection for all types of buyers including consumers and business buyers, whereas Unfair Contract Terms Act 1977 offered

specific protection to business buyers. The "consumer" is defined as individual purchasing goods for personal use under Section 2(3) of the Consumer Rights Act 2015. The Act was specifically designed to protect consumers. Unfortunately, this focus on consumer protection has often overlooked the needs of SME buyers who purchase goods for resale or other non-consumer purposes, leaving a gap in protection for such buyers.

Long before the Consumer Rights Act 2015, English law introduced the Unfair Contract Terms Act (UCTA) 1977 to safeguard business buyers. The UCTA prevents sellers from exploiting a buyer's lack of expertise by limiting the ability to exclude liability for legal obligations unless the exclusion meets a test of reasonableness.[121] While UCTA offers significant protection to business buyers, it does not extend to international sales of goods contracts, though it still applies to international service contracts.[122]

Accordingly, SME buyers are not granted special protections under English law. The only protections available to such buyers are those embedded in the Sale of Goods Act 1979 and common law, since UCTA 1977 does not apply to international contracts despite offering protection for business buyers. The following analysis will briefly compare the CISG with English law to assess which framework better safeguards the interests of SME buyers.

Regardless of whether the contract is governed by CISG or English law, the rights and obligations of each party can be outlined through express terms. Article 35 of the CISG[123] and the Sale of Goods Act 1979 both impose additional rights and obligations in a contract to protect buyers, allowing them to claim damages for breaches of both express and implied terms. Under both

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[121] Unfair Contract Terms Act 1977 s 11.

[122] *Trident Turboprop (Dublin) Ltd v First Flight Couriters* [2008] 2 Lloyd's Rep 581. Unfair Contract Terms Act 1977 s 26.

[123] CISG art 35.

frameworks, the seller is required to deliver goods that conform to the contract's specified quantity, quality, and description.[124] In English law, there is an additional requirement that the seller has the right to sell the goods, which is an implied term under the Sale of Goods Act 1979.[125] This right ensures that the buyer is not subject to any legal claims from third parties. While the CISG does not explicitly require the seller to have the right to sell the goods, this requirement is reflected in Article 41 of the CISG, which mandates that the seller delivers goods that are free from any third-party rights or claims.[126] This ensures the buyer is protected from potential legal issues related to ownership and title.

For SME buyers, this clearer and stricter protection under English law is significant as they are less able to absorb the financial consequences of purchasing goods subject to third-party claims (for example, retention of title disputes or intellectual property claims). The explicit statutory guarantee reduces uncertainty and strengthens the buyer's right to immediate remedies, providing greater legal security for SMEs operating with limited risk tolerance.

Under Article 35(2) of the CISG, if the buyer consents to the delivery of non-conforming goods or cannot be unaware of the nonconformity, the seller is exempt from liability for any alleged nonconformities.[127] This provision essentially limits the buyer's ability to claim for nonconformity once they accept the goods, particularly if they were aware of the issue. In contrast, under English law, a buyer loses the right to reject non-conforming goods if they accept them. However, Section 35 of the Sale of Goods Act 1979 still allows the buyer to claim damages even if they negligently accepted nonconforming goods.[128] This

[124] Sale of Goods Act 1979 scts 13 and 14 (SGA).
[125] SGA s 12.
[126] CISG art 41.
[127] CISG art 35(2).
[128] Sale of Goods Act 1979 s 35.

provides buyers with more protection, as English law rewards them with damages even when they fail to notice the nonconformity at the time of acceptance. Article 35(2) of CISG can disproportionately disadvantage SME buyers because it relieves the seller of liability where the buyer knew or could not have been unaware of the nonconformity at the time of contracting. In practice, this may bar SMEs from claiming remedies if they accept goods despite visible defects or fail to identify problems due to limited technical expertise.

Large commercial buyers are generally less affected because they typically have technical capacity to detect defects early. They can also negotiate contractual safeguards. This provision can undermine the protection of the buyer's interests, particularly in situations where the buyer might have acted negligently but was still expected to accept the goods.

In *Oberlandesgericht Köln*, 22 U 4/96 (Germany), the court ruled against the general interpretation of Article 35, deciding that a seller would not be exempt from liability if the buyer should have been aware of the nonconformity.[129] This decision was based on broader principles embedded in Articles 40 and 7 of the CISG, which prioritize the protection of a negligent buyer over a fraudulent seller.[130] Although this ruling worked in favour of the negligent buyer, it remains an exception, as Article 35 explicitly allows judges to disregard the interests of reckless buyers.[131] In essence, while the CISG provides some room for protecting buyers in cases of negligence, it still leans towards protecting sellers in situations where the buyer fails to notice the nonconformity, which can be seen as a disadvantage for all forms of buyers.

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[129] *Oberlandesgericht Köln*, 22 U 4/96 (21 May 1996, Germany).
[130] CISG arts 7, 40.
[131] *Ibid* art 35.

Under CISG, buyers are obligated to inspect goods upon receipt[132] and provide notice of any nonconformities[133] to trigger remedies. English law, however, does not impose such a notice requirement, meaning buyers are not required to inspect goods or notify the seller to unlock remedies. This places an additional burden on buyers under CISG and appears to benefit the seller by allowing them to remedy defects. In contrast, English law's focus on termination as a primary remedy does not require notice, making it more favourable for buyers, especially those with less experience in legal matters. While the notice under CISG can be beneficial in cases involving unique or scarce goods, it may also be inconvenient in other situations. Therefore, English law's approach to nonconformity, which does not burden the buyer with a notice requirement, offers more practical protection for SME buyers.

Under the notice and inspection requirements of CISG, SMEs may lose remedies if they fail to detect or formally notify defects in a timely manner. SMEs often operate under time pressure and commercial constraints, making strict notice rules riskier for them. English law's approach, therefore, provides SMEs with greater practical protection by allowing them to pursue remedies without risking technical loss of rights due to procedural errors.

Article 38 of the CISG obliges buyers to inspect goods within a short time frame,[134] which can be interpreted strictly in some jurisdictions, limiting the inspection period to just a few days regardless of the goods' nature or complexity. This is especially challenging for more sophisticated goods that may require additional time for proper inspection. Article 39, similarly, imposes tight deadlines for giving notice of nonconformities.[135] Although the CISG only

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[132] *Ibid* art 38.
[133] *Ibid* art 39.
[134] *Ibid* art 38.
[135] *Ibid* art 39.

requires that the notice specify the defects, courts often demand highly detailed notices, expecting buyers to list every possible defect.[136] This creates an additional burden for buyers, despite CISG commentary suggesting they are not required to mention all foreseeable defects.[137]

The requirement under the CISG for buyers to provide adequate notice of nonconformities within a restrictive time frame and with detailed content puts significant pressure on buyers, especially SMEs. Failing to comply with these requirements can result in the loss of important remedies, including the right to damages.[138] Given these burdens, it is suggested that English law might be a better option for SMEs, as it does not impose similar preconditions to access remedies.

Under English law, the primary remedy for breaching a condition is termination of the contract, regardless of the severity of the breach.[139] Even a minor breach allows for repudiation of the contract, as seen in *Re Moore v Landeur*, where the court allowed termination despite no loss being suffered by the buyer.[140] However, in B2B contracts, a slight breach does not usually justify termination under English law.[141]

In CISG, termination is only permitted for a "fundamental breach", which has led some scholars like Min Yan to argue that English law is more lenient, allowing termination for minor breaches.[142] It should be acknowledged that while

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[136] *Namur v Wesco* (n 70).
[137] CISG Advisory Council (n 72).
[138] Kennedy (n 36).
[139] P Atiyah, John N Adams and Hector L McQueen, *The Sale of Goods* (11th edn, Pearson Education 2005) 499.
[140] *Re Moore & Co Ltd v Landauer & Co* [1921] 2 KB 519.
[141] SGA 1979 s 15A.
[142] Min Yan 'Remedies under the Convention on Contracts for the International Sale of Goods and the United Kingdom's Sale of Goods Act: A Comparative Examination' (2011) 3(1) *City University Hong Kong Law Review* 109, 114.

there is some overlap between the obligations under CISG and English law, the term "fundamental breach" under CISG is sometimes interpreted liberally by courts, which challenges the strict interpretation of the term as requiring a very serious breach.

With the introduction of section 15A to the Sale of Goods Act (SOGA)[143], cases like *Re Moore v Landeur*[144] would likely be interpreted differently today, as English law now also limits termination for minor breaches. While the uncertainty surrounding the concept of "fundamental breach" in CISG may seem problematic, it can be beneficial in allowing courts to balance the rights of both parties. For example, if a more flexible approach like the one found in the CISG had been applied in *Re Moore v Landeur*[145], the outcome could have been fairer, as termination for a minor breach with no actual loss would be seen as unjust to the seller.

Min Yan argues that the main issue with the concept of "fundamental breach" is its unpredictability, as it is unclear when or if parties will have the right to terminate the contract.[146] English law also does not permit repudiation in B2B sales for slight breaches,[147] so in this regard, the results under both CISG and English law may align depending on how courts interpret the terms. Defining a "fundamental breach" is as difficult as defining a "slight" breach, and courts may determine a term to be a warranty rather than a condition,[148] even if the parties intended otherwise.

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[143] SGA 1979 s 15A.
[144] *Re Moore* (n 140).
[145] *Ibid.*
[146] Yan (n 142) 117.
[147] SGA s 15A.
[148] *L Schuler AG v Wickman Machine Tool Sales Ltd* [1973] 2 WLR 683.

Thus, the availability of termination as a remedy largely depends on the judge's interpretation, regardless of whether the governing law is CISG or English law. There are cases where courts have interpreted "fundamental breach" in favour of the buyer,[149] and others where they have not,[150] indicating that it is not guaranteed that English law will always provide better protection. In fact, the Secretariat's commentary on the CISG draft emphasized that remedies should be decided based on the specific circumstances, such as monetary harm or the value of the breach, suggesting that the outcome depends more on the facts of the case than the choice of law itself.[151] This could be beneficial to SME buyers because they often lack the legal resources to litigate complex interpretations of breach. Clearer classification of contractual obligations under English law, compared to the "fundamental breach" test under CISG, gives SMEs greater legal certainty.

Under English law, specific performance is a discretionary remedy and can only be granted in limited situations,[152] typically when a party can demonstrate difficulty in obtaining substitute goods.[153] Similarly, Article 28 of the CISG provides that while specific performance is a possible remedy under the convention, the court is not obligated to order it, and domestic law will prevail. This means that, like English law, specific performance under CISG is discretionary. This contradicts the view held by some academics who consider

[149] *Lamina System v Coelian* (n 114).
[150] *Cobalt Sulphate* (n 109).
[151] United Nations Commission on International Trade Law, *United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March- 11 April 1908: Official Records* (United Nations 1981) < https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf> accessed 23 June 2025.
[152] Edwin Peel (ed), *Treitel: The Law of Contracts* (15th edn, Sweet & Maxwell 2020) 843.
[153] *Ibid*.

specific performance to be the primary remedy under the CISG.[154] Honnold argues that Article 28 of CISG allows domestic law to override the provisions in Articles 46 and 62, which typically provide for specific performance.[155]

In both *Styles v Movie Star* (CISG)[156] and *Sky Petroleum v VIP Petroleum*[157] (English law), courts required buyers to prove difficulty in obtaining substitute goods before granting specific performance. Thus, specific performance is considered an exceptional remedy under both systems, available primarily in cases involving unique goods or where hardship in obtaining alternatives exists.

However, buyers cannot predict with certainty whether specific performance will be granted, as it depends on the circumstances of the case. Under the CISG, specific performance is formally recognised as a primary remedy under Articles 46 and 62, although Article 28 significantly qualifies its practical availability by permitting courts to apply domestic restrictions on the remedy. By contrast, English law treats specific performance as an exceptional discretionary remedy, with damages remaining the primary response to breach of contract., other remedies available under the CISG, such as price reduction[158] and the right to cure,[159] are unique to the convention and not found in English law. These remedies provide additional options for buyers that are not typically available in English contract law.

The price reduction remedy has been criticized, because it forces the buyer to pay even a portion of the price for defective goods.[160] This remedy can be

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[154] A Szakats 'The Influence of Common Law Principles on the Uniform Law on the International Sale of Goods' (1966) 12 *International and Comparative Law Quarterly* 761.
[155] Honnold (n 73).
[156] *Styles* (n 81).
[157] *Sky Petroleum v VIP Petroleum* [1974] 1 WLR 576.
[158] CISG art 50.
[159] CISG art 47.
[160] Okoli (n 80).

unreasonable in cases where the goods are useless to the buyer. Schlechtriem views it as beneficial to the buyer compared to damages.[161] Additionally, Piliounis highlights the challenges a buyer might face when executing this remedy, particularly if the full price has already been paid.[162] The CISG price reduction remedy can be unfavourable to SME buyers in certain situations. Although it allows buyers to reduce the price of non-conforming goods without proving damage, it still requires them to retain and pay for defective goods. As SMEs are particularly affected because they often lack the financial capacity to absorb such losses or repurpose defective goods. As Piliounis notes, difficulties also arise when the full price has already been paid, requiring recovery efforts.[163] While Schlechtriem and Schwenzer view the remedy as procedurally advantageous, it may not provide economically adequate relief for SMEs.[164]

The right to cure, another unique CISG remedy, allows the seller extra time to fulfil their contract.[165] While it may seem biased toward the seller, it can be beneficial if the court allows a reasonable period for the seller to perform without burdening the buyer. The buyer can also claim damages if the seller fails to deliver within this period. This remedy, according to Honnold, should be seen as a tool for cooperation, not a punitive measure.[166] The right to cure under CISG is unique and has no direct counterpart in English law. Initially, it may seem seller friendly as it gives the seller extra time to fulfil the contract if they fail to deliver on time. Critics argue that this is unreasonable, forcing the buyer to give

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[161] Peter Schlechtriem and Ingeborg Schwenzer (eds), *Commentary on the UN Convention on Contracts for the International Sale of Goods (CISG)* (2nd edn, Oxford University Press 1998) 177.

[162] P Piliounis 'The Remedies of Specific Performance, Price Reduction and Additional Time Under the CISG: Are These Worthwhile Changes or Additions to English Sales Law?' (2000) 12 *Pace International Law Review* 1, 26.

[163] *Ibid.*

[164] Schlechtriem and Schwenzer (n 161).

[165] CISG art 47.

[166] Honnold (n 73).

a breaching seller another opportunity. However, it should be emphasized that under Article 47(1) CISG, the buyer only needs to allow a "reasonable period" for the seller to fulfil their obligations.[167] If this period is interpreted in a way that does not burden the buyer, the remedy becomes beneficial, as it enables the buyer to obtain what they contracted for without resorting to costly litigation. Additionally, if the seller still fails to perform, the buyer can claim damages under Article 47(2).[168]

If judges interpret the additional time for performance under CISG reasonably, considering both parties' interests, this remedy can be a useful tool for amicable settlements, giving sellers a second chance to rectify mistakes. However, due to past interpretations of CISG provisions by courts that have followed a strict formalistic approach, there is a risk that this remedy may unfairly disadvantage buyers. Therefore, the effectiveness of this remedy largely depends on how courts and tribunals apply and interpret it.

The analysis of key provisions in CISG and English law shows that while the CISG aims to be fair to both parties, its provisions tend to favour the seller more than English law does. The use of imprecise and open-textured language in the CISG has led to inconsistent interpretations by courts in different countries. However, as demonstrated by case law, the lack of clarity has led to vastly different interpretations of the same provisions.

Given the inconsistent interpretations of CISG provisions, the only way buyers can protect themselves is by including specific contractual provisions that limit the potential negative impact of CISG's ambiguous terms. However, SME buyers may lack the legal or technical expertise to amend contracts effectively or know how to issue a proper notice to preserve their right to remedies.

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[167] CISG art 47(1).
[168] CISG art 47(2).

Despite the initial intention of the CISG to support SME owners in international contracts,[169] the uncertainties in its interpretation and the strict notice requirements often create more challenges than benefits for small businesses. As a result, English law is likely a more advantageous choice for business buyers, including SME owners, due to its predictability and the availability of remedies without any preconditions. This makes English law a more accessible and reliable option for businesses of all sizes.

While the CISG offers unique remedies like price reduction and the right to cure, these remedies are tied to a notice requirement, which is often difficult to satisfy. As a result, buyers risk losing both common and novel remedies under the CISG. Additionally, remedies like price reduction are less favourable to buyers, although the right to cure provides a better balance of interests. Given these factors, buyers, especially SMEs should opt for English law, as it provides certainty, predictability, and access to remedies without the stringent preconditions required by the CISG.

Despite offering greater certainty, English law is also not ideal for protecting SME buyers. Compared with the CISG, English law provides predictability but not enhanced protection, as neither regime fully recognises the commercial reality that SME buyers occupy a vulnerable position. Although formally classified as B2B parties, SMEs often lack the legal sophistication of larger commercial entities.

Under English law, SME buyers are not granted any special protective status. Their protection is limited to the implied terms and remedies available under the Sale of Goods Act 1979 and the common law. While the Unfair Contract Terms Act 1977 provides important safeguards for business buyers, its limited

[169] United Nations Commission on International Trade Law (n 151).

application in international commercial contracts significantly reduces its practical value for SME buyers engaged in cross-border trade, where such protection is most needed.

The term "business buyer" should be redefined to differentiate small business owners from larger enterprises. This redefinition would help create specific protections for SME buyers, like consumer protections. While "business buyer" is not clearly defined, UK law categorizes small and medium-sized enterprises (SMEs) based on the number of employees and annual turnover.[170] Businesses with fewer than 250 employees and a turnover under 50 million GBP are classified as SMEs.[171] Using this criterion to redefine business buyers could provide targeted protection for SMEs in international transactions.

The European Commission defines a micro-business as one with fewer than 10 employees and a turnover of less than 2 million Euro.[172] According to BERR statistics, 95% of the 4.4 million SMEs in the UK have fewer than 10 employees.[173] Using this categorization, business buyers could be divided into three groups: micro-business buyers, SMEs, and large business buyers. Since micro-businesses are like consumers due to their small size and lack of access to specialized legal support, it is suggested that the Consumer Rights Act 2015 should be applied to protect their interests. Given that micro-businesses make up most SMEs, safeguarding their interests is crucial.

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[170] Lee Roberts, 'Bionic's Guide to Business Essentials' (*Bionic*, 21 July 2022) <https://bionic.co.uk/business-finance/guides/what-is-a-small-business/> accessed 1 August 2025.

[171] *Ibid.*

[172] European Commission, *The New SME Definition: User Guide and Model Declaration* (Enterprise and Industry Publications, 2005) <https://www.eusmecentre.org.cn/wp-content/uploads/2022/12/SME-Definition.pdf> accessed 31 July 2025.

[173] Office of Gas and Electricity Markets (Ofgem), *Defining "Micro-businesses"* (2008) <https://www.ofgem.gov.uk/sites/default/files/docs/2008/04/ofgem---defining-micro-businesses-180308.pdf> accessed 7 February 2026.

It is acknowledged that the difficulty in achieving universal agreement on criteria for defining SMEs and business buyers, noting that definitions vary between the European Union and the UK.[174] However, setting official benchmarks could help address this issue. The size of a business impacts various factors like loans and insurance, and similarly, it should influence the level of legal protection available. The solution would be to categorise business buyers into three groups: micro-business buyers, SME buyers, and professional business buyers. It is suggested that micro-business buyers be protected under consumer protection laws due to their similarities with consumers. Additionally, SMEs should have a new statutory mechanism for protecting their interests. However, no specific protection is proposed for larger business buyers, as they typically have access to specialized legal departments.

The most significant practical problem with the CISG is not the absence of remedies but rather the loss of remedies resulting from procedural complexities and interpretative uncertainty. Unlike micro-businesses, SME buyers could not be treated as consumers. However, their limited legal and technical capacity justifies a modified CISG framework. One possible model would retain the existing inspection and notice requirements while allowing courts greater discretion to excuse procedural defects where an SME buyer has acted in good faith but lacks the commercial and legal expertise necessary to navigate the legal complexities and uncertainties. The comparative analysis with English law demonstrates that buyer remedies can be protected without making them excessively dependent on technical procedural requirements. Such a framework would preserve commercial certainty while recognising the intermediate position occupied by SME buyers. Accordingly, the most coherent

[174] Roberts (n 170).

reform would be a three-tier approach: micro-businesses would receive consumer-law protections; SME buyers would benefit from greater procedural flexibility and safeguards against the disproportionate loss of remedies; and large commercial entities would remain subject to the ordinary CISG regime.

Under English law, buyer remedies are not made excessively dependent upon technical procedural requirements. One of the principal difficulties faced by SME buyers under the CISG is the risk of losing substantive remedies because of non-compliance with Articles 38 and 39. While English law does not provide special protection for SME buyers, it generally permits buyers to pursue remedies without first satisfying comparable inspection and notice requirements. This approach offers greater practical protection to smaller businesses that may lack in-house legal expertise. Therefore, future reform of the CISG could retain the notice mechanism while introducing greater flexibility for SME buyers. This will allow courts to excuse minor procedural defects where the buyer has acted in good faith and the seller has suffered no prejudice. Such an approach would reduce the disproportionate burden currently imposed on smaller enterprises.

5 Conclusion

In conclusion, this article has demonstrated that while CISG aspires to strike a neutral and balanced allocation of rights and obligations between buyers and sellers, its practical operation does not sufficiently accommodate the structural vulnerability of SME buyers in international B2B transactions. The Convention's underlying assumption of commercial parity fails to reflect contemporary market realities, where micro and small enterprises increasingly participate in cross-border trade without equivalent legal sophistication, bargaining power, or financial resilience.

The analysis of Articles 35, 38, 39, 47, 49 and 50 reveals that ambiguity, strict notice requirements, and the high threshold for fundamental breach can operate harshly against SMEs. Although the text of the CISG is not inherently biased, inconsistent judicial interpretation and reliance on discretionary standards such as "reasonable time," "fundamental breach," and "unreasonable inconvenience" generate uncertainty that disproportionately burdens smaller businesses. Large commercial actors are better equipped to absorb this uncertainty through legal expertise and risk allocation mechanisms, whereas SMEs face heightened exposure to procedural forfeiture of substantive rights.

The comparison with English law further demonstrates that greater doctrinal certainty does not necessarily translate into adequate protection for SME buyers. Although English law avoids some of the procedural burdens associated with the CISG (particularly the strict inspection and notice requirements), it similarly treats SME buyers as ordinary commercial actors rather than recognising their structural vulnerability. Consequently, the comparative analysis suggests that the central problem is not confined to the CISG. Rather, both international and domestic sales law continue to operate on the assumption that all business parties possess comparable bargaining power, expertise, and resources. The comparison therefore reinforces the argument that SME buyers require distinct legal recognition to reflect contemporary market realities.Ultimately, formal equality within the CISG masks substantive inequality. Recognising SME buyers as a distinct category within international sales law, and adopting interpretive approaches sensitive to commercial vulnerability, would better align the Convention with modern economic realities and promote fairer participation in global trade.