BUYER'S REMEDIES IN INTERNATIONAL SALES CONTRACTS UNDER CISG 1980 AND VIETNAM COMMERCIAL LAW 2005: A COMPARATIVE ANALYSIS

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Abstract

In international trading activities, the appearance of dispute is unavoidable, especially on the seller's side for not timely and properly executing the contract duties. Therefore, the topic of buyer's remedies in resolving seller's breach of contract has attracted massive attention from the academic forum worldwide. The topic also makes up a major part in many national and international laws. However, regulations on such content are often different from one law to another. Acknowledging the above reason, this article aims to clarify the differences between the buyer's remedies under CISG 1980 and the Vietnam Commercial Law 2005 (VCL 2005). To achieve this aim, the article will focus on examining certain relevant CISG provisions against the corresponding VCL rules in a comparative setting. From the comparisons, the article will determine the practical consequences of those differences between CISG and VCL, and thus make the CISG more digestible to Vietnamese enterprises and legal practitioners.

Keywords: CISG 1980, Vietnam Commercial Law 2005, buyer's remedies, breach of contract.

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1. Introduction

Thanks to the globalization and the rapid development of technology, trade liberalization is transpiring worldwide, which makes business activities nowadays more animated than ever before. In particular, the export and import activities are being executed more frequently in many countries, including Vietnam. The volume of export and import of our nation rose to 350.74 billion USD in 2016, which represents a 7.1% increase in comparison with that of 2015. Our export and import volumes, which are 176.63 billion USD and 174.11 billion USD accordingly, both experienced an increase of 9% and 5.2% respectively compared to the same period last year[2]. However, in trading activities, the

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[2] https://www.customs.gov.vn/Lists/ThongKeHaiQuan/ChiTieuThongKeTongHop.aspx-?Group=S%u1ed1+li%u1ec7u+th%u1ed1ng+k%u00ea, accessed March 25th 2017.

appearance of dispute is unavoidable. The conflicts can be resulted from either side, especially from the seller's for not timely and properly executing the contract duties. Whichever side and cause engendering the disputes, one apparent thing is that both parties will suffer loss and damage resulting from the incident. Considering Vietnam where the export and import activities are energetically occurring, together with the inexperienced knowledge of Vietnamese enterprises in global market, the number of conflicts resulting from the seller's breach of contract is inevitably increasing, resulting in costly lawsuit. Therefore, studying about the buyer's available remedies and their application in conformity with the law is significantly important.

On December 18th 2015, Vietnam has acceded to the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as CISG 1980), and officially became the 84th State Party to the Convention[3]. The Convention serves as an equitable and modern framework in regulating the drafting of contracts of international sale of goods, the obligations of the buyer and seller, together with their available remedies in case of a breach of contract from the other counterpart, and other contract-related aspects. Starting from January 1st 2017, the Convention has officially become the fundamental source of applicable law for sales contracts in Vietnam.

In international transactions, a majority of Vietnamese firms have a tendency to heavily utilize the Vietnam Commercial Law 2005 (VCL 2005), as the domestic law is more familiar and easier to access. Therefore, the knowledge of Vietnamese enterprises towards other international laws, especially the CISG 1980, is very limited. This inactive approach will lead Vietnamese firms to more uncertainties in doing business, and thus create more disputes, especially those resulting from the seller's breaching acts. The reason is that from 2017, for a majority of cases, the application of CISG is no longer an encouragement, but becomes a must for all Vietnamese salesmen when conducting transactions with foreign partners.

Realizing such situation of Vietnamese enterprises, the authors decided to write this paper in comparative setting between VCL 2005 – the more familiar legal system, and CISG 1980 – the less familiar international law in Vietnam. The paper aims to find the differences between the two legal systems on the topic of buyer's remedies, and to determine therefrom practical consequences of these differences, and thus make CISG 1980 more digestible to Vietnamese firms and lawyers.

The object of this research is the buyer's remedies in International Sales Contract under CISG 1980 and VCL 2005.

Regarding the scope of content, the article shall focus on certain provisions of buyer's remedies under CISG 1980 and VCL 2005, mainly revolving around the four following remedies: (1) Specific performance; (2) Avoidance of contract and Nachfrist principle; (3) Contract penalty; and (4) Damages. About the scope of space, the paper focuses on identifying the differences

[3] https://cisgvn.wordpress.com/2015/12/31/viet-nam-chinh-thuc-tro-thanh-thanh-vien-thu-84-cua-cisg/, , accessed March 26th 2017.

in the buyer's remedies regulations between CISG 1980 and VCL 2005, with the aim of determining practical consequences and remarks in the application of such remedies for Vietnamese enterprises. About the scope of time, from the comparative analysis above, distinct recommendations will be suggested to support Vietnamese firms on the path of international integration until 2020, which aligns with Decision No.40/QD-TTg by the Prime Minister in 2016 regarding the overall strategy for international integration through 2020, with a vision toward 2030.

2. Literature review

Regarding Buyer's remedies of CISG 1980

Peter Huber and Alastair Mullis (2007), *The CISG: A New Textbook for Students and Practitioners*. The book provided a clear exposition of CISG 1980, from the history of the Convention to its structure and scope of application. The book also explained many complex trade-related issues of CISG, including the obligations of the seller, and remedies of the buyer.

Peter Schlechtriem (1986), *Uniform Sales Law - The UN-Convention on Contracts for the International Sale of Goods*. The study made an efforfully look at all stipulations of CISG under different aspects. Among them, the content regarding the remedies for the buyer (from Article 45 to Article 52) and the obligation of the seller (from Article 30 to Article 44) was thoroughly examined.

Nevi Agapiou (2016), *Buyer's remedies under the CISG and English sales law: A comparative analysis*. Certain stipulations of CISG regarding the buyer's remedies (especially from Article 45 to Article 52) was closely elucidated in the study. By comparing CISG provisions against established English sales law, this paper made the Convention more comprehensive and digestible to legal practitioners worldwide.

Gusztáv Bacher (2008), *Remedies of the buyer under CISG*. The paper analyzed all buyer's remedies under CISG 1980 in case of seller's breaching acts by interpreting relevant CISG provisions, together with discussions about some problems of each remedy.

Nguyen Thi Mai (2014), *Công ước Viên năm 1980 về hợp đồng mua bán hàng hóa quốc tế*. The research had summarized the structure and content of CISG 1980, together with some practical influences of the Convention application on many trade-related aspects of Vietnamese firms. At the same time, the research has pointed out, at the macroeconomic level, the benefits, issues and several solutions when Vietnam accedes to the Convention.

Vietnam International Arbitration Centre and Foreign Trade University (2016), *101 câu hỏi - đáp về Công ước của Liên Hợp Quốc về Hợp đồng mua bán hàng hóa quốc tế (CISG)*. The book answered a number of questions regarding the application of CISG 1980 by Vietnamese firms and lawyers. The subject of buyer's remedies is incorporated within the book, located in Section 2 of Part 3.

Regarding Buyer's remedies of VCL 2005

Phan Thi Thanh Thuy (2014), *So sánh các quy định về trách nhiệm do vi phạm hợp đồng trong Luật Thương mại Việt Nam 2005 và Công ước Viên 1980*. The scientific paper provided valuable comparative information between VCL 2005 and CISG 1980 on the matter of "breach of contract". The paper

also developed further comparison regarding the theories and the enforcement of buyer's remedies between the two legal systems.

Ngo Huy Cuong and Nguyen Dang Huy (2012), *Chế tài thương mại trong luật Thương mại Việt Nam 2005*. The thesis provided theorical analysis on the stipulations regarding the buyer's remedies in VCL 2005. Therefrom, the thesis determined certain legal flaws, and recommended certain modifications to enhance VCL 2005.

Duong Anh Son and Le Thi Bich Tho (2005), *Một số ý kiến về phạt vi phạm do vi phạm hợp đồng theo quy định của pháp luật Việt Nam*. The paper suggested some legal recommendations on the draft of VCL 2005 from VCL 1997 regarding the provisions of contractual penalty, from its function to its limit.

Nguyen Thi Khe (2008), *Một số ý kiến liên quan đến các quy định về chế tài trong thương mại theo quy định của Luật thương mại*. The paper provided valuable analysis on certain legal drawbanks appeared in the text of VCL 2005, especially on the provisions of Specific Performance, Damages, together with Suspension and Avoidance of Contract.

3. Methodology

Secondary data collection: This method encompassed a sequence of tasks, such as gathering, analyzing, making comparisons and compiling data and information from credible sources, namely textbooks, journals, legal documents, domestic and international researches, together with the official database of CISG 1980 (http://www.cisg.law.pace.edu). The gathered datas focused on the provisions of buyer's remedies under CISG 1980 and VCL 2005, from the intepretations of legal texts to the legal cases applying them.

Comparative law: This method required the authors to collate CISG 1980 with other national or regional legal systems, in order to detect similarities and differences among jurisprudences on governing the same matter of the buyer's remedies in International Sales Contracts.

In-depth interview: The authors organized to consult: (1) Mr. Nguyen Cong Phu - Deputy Chief Judge of the Economic Court of People's Court HCM City; and (2) Mr. Pham Van Chat - Arbitrator at Vietnam International Arbitration Centre. The questions concentrated on the comparisons regarding the utilization of buyer's remedies between CISG 1980 and VCL 2005. The professional contributions and expertise judgements also helped update the paper with the latest situation regarding application of buyer's remedies in International Sales Contracts under CISG.

4. Results and Findings

CISG 1980

The United Nations Convention on Contracts for the International Sale of Goods (CISG), also referred to as the Vienna Convention, is regarded as one of the most successful international conventions promulgated by the United Nations[4]. The utmost contribution of the Convention is the creation of equitable and modern substantive

[3] See Marcia J.Staff, United Nations Convention on Contracts for the International Sale of Goods: Lessons Learned from Five Years of Cases (2009), South Carolina Journal of International Law and Business: Vol.6: Iss. 1, Article 2, page 3.

rules regulating issues arising from international sales contract, which minimizes considerably the number of trade-related disputes and obstacles. CISG was originated from the two following antecedents: (1) the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF); and (2) the Convention relating to a Uniform Law for the International Sale of Goods (ULIS)[5]. Both early treaties were signed at Hague in 1964 and came into effect since 1972.

Despite relentless efforts from UNIDROIT, the creation of the two treaties above received limited worldwide acceptance and ratification. Shortly after the failure, UNCITRAL initiated a project to draft a new Convention that could reconcile the implicit problems of the two antecedents. The official draft version, called the New York draft, was established in 1978 and presented to all United Nations members for comment. In 1980, the CISG was formed on the basis of the New York draft and the comments, and eventually signed in Vienna (Austria). The renovating Convention gained huge support and assistance from many countries and achieved significant results around the world. From initially 11 contracting states on January 1st 1988, the number of nations had continuously been enhanced. As of March 2017, there have been 85 nations ratifying the CISG, among them both Socialism nations and developing countries.

The Text of the Convention encompasses 101 Articles, compiled into four Parts, which sufficiently covers all issues and aspects relating to contracts for international sale of goods. Its renovating structure is epitomized as follows:

Part 1 - Sphere of application and general provisions, ranging from Article 1 to 13, deals directly with the applicability of the Convention and contains general principles of the interpretation and formality requirements. The first part presents a strict adherence to the promotion of uniformity and good faith in global trade.

Part 2 - Formation of the contract, comprising from Article 14 to 24, governs legal issues regarding the contract formation. This part is divided into three sub-parts: (1) the first four articles mention about the offer; (2) the next five articles deal with the acceptance; and (3) the final two articles address the time when a contract is concluded and when a communication "reaches" the addressee.

Part 3 - Sale of goods accounting for the largest number of articles, from Article 25 to 88, is divided into five chapters, and covers a wide range of core contents, especially the buyers and sellers' obligations, and their respective remedies. This particular content appears to be more eminent, since it clearly reflect the intent of creating juridical fairness for both parties engaging in a contractual relationship.

Part 4 - Final provisions, covering the last 13 Articles, encloses what can be characterized as public international law of the CISG, including procedural rules for entrance, reservations, effectiveness of the Convention and so on.

[5] ULF governs the formation of contracts (relating to offer and acceptance). ULIS governs the rights and obligations of seller, buyer and the remedies applicable under the situation of a breach of contract.

VCL 2005

VCL 2005 is not the first Commercial law of Vietnam, as the first law to govern commercial activities in the country was created in 1997. Since Vietnam embarked on the campaign of "Doi moi dat nuoc" (National Renewal), the 1992 Constitution recognized the importance of various economic sectors and their rights in conducting business freely and their equality before law. In such context, the first commercial law of Vietnam was enacted by the National Assembly on May 10th, 1997, and took effect on January 1st, 1998. Despite being a fundamental landmark in encouraging the lawful commercial activities and preventing illegal acts in the country, after nearly a decade of application, VCL 1997 revealed many limitations as Vietnam integrated into the global commerce. Such limitations and inadequacies had paved the way for the creation of VCL 2005.

VCL 2005 is an updated version of VCL 1997 and, until now, still the main applicable law in the country. VCL 2005 was passed by the National Assembly on June 14th, 2005, and came into force on January 1st, 2006[6]. With 9 chapters and 324 articles, the new commercial law has complied not only with the principles set forth in Vietnam Civil Code, but also with the principles of international treaties on commerce which Vietnam has signed or acceded to, together with many other international commercial laws and practices. With a broader scope of regulation, VCL 2005 governs many trade-related aspects, from the formation and content of sale and service contracts, to commercial activities conducted both inside and outside the territory of Vietnam, as well as the content of a more enhanced remedial system for both buyers and sellers. The remedies are governed in Section 1 of Chapter 7 (from Article 292 to Article 316).

Specific performance

In the scope of the paper, the authors referred specific performance to the two following remedies: (1) Repairment; and (2) Replacement. When the Seller fails to deliver goods conforming to contractual provisions, the Buyer can resort to one of the two above remedies to require the Seller cure his faults in the contract.

Regarding specific performance, regulations of VCL 2005 and CISG 1980 share two common points. *Firstly*, both legal systems regulate the utmost ground for application of such remedies is that there is a breach of contract from the Seller's side. *Secondly*, by exercising specific performance, the Buyer is not entitled to rely on other remedies during the period, apart from his right to claim damages. This is regulated in Article 45.2 of CISG 1980, and Article 299.1 of VCL 2005.

However, the two legal texts exhibit different perspectives on the specific situations under which the Buyer can choose and exercise between repairment or replacement. Under VCL stipulations, the border between the application of repairment and replacement is still blurred, as there is no distinct regulation on such issue. This limit can be explained by the nature of VCL 2005 as being the law for domestic trade application.

[3] http://vietnamlawmagazine.vn/history-and-principles-of-commercial-law-in-vietnam-4485.html, accessed March 26th 2017.

On the contrary, with the aim of harmonizing and simplifying the law of International Sales Contracts, CISG 1980 comprises very detailed provisions on the application of repairment and replacement. The Buyer is only entitled to demand delivery of substitute goods if the Seller's *lack of conformity constitutes a fundamental breach of contract* (Article 46.2 CISG 1980); while the Buyer can easily require repairment as the ground for its application is simply the Seller delivers non-conforming goods to the contract, regardless of whether the non-conformity causes fundamental breach. This distinction in the application between replacement and repairment represents the spirit of internationalism in CISG 1980: on a global scale, enforcing a replacement would incur significantly high costs of import and export duties, together with the long-distance delivery freight of vessels or airplanes. Therefore, CISG 1980 implicitly limits the Buyer's right in demanding substitute delivery, and also its clear provisions help the parties and the legal authorities resolve trade dispute more efficiently and effectively.

In short, regarding specific performance, while VCL 2005 contains no regulations distinguishing the application of repairment and replacement, CISG 1980 expressly stipulates that replacement can only be resorted to by the buyer under fundamental breach of contract from the seller.

Nachfrist principle in the application of Contract Avoidance

Regarding the avoidance of contract, the authors would like to hightlight one notable feature called the Nachfrist principle. If repairment or replacement discussed earlier deal with non-conformity of the goods delivered, Nachfrist principle is created to resolve disputes arising from the Seller's mistimed delivery. The principle allows an additional period for contractual performance by the Seller who did not perform his obligations at the due date regulated in the contract. In case the Seller fails to fulfill his obligations even after the expiry of the additional period, the Buyer is then entitled to declare contract avoided and to make a cover transaction with a third-party.

Nachfrist principle is the main difference on the matter of contract avoidance between VCL 2005 and CISG 1980. While VCL 2005 does not contain any stipulation regarding the matter, CISG 1980 clearly stated the principle-in-question in Article 49.1(b). The principle has significant value for the parties, and also the judges and arbitrators, as it acts as an efficient tool to resolve dispute cases relating to when avoidance of contract can be applied. As both VCL 2005 and CISG 1980 regulate that the remedy of contract avoidance can only be utilized under the circumstance of fundamental breach (Article 310 VCL 2005, Article 49.1(a) CISG 1980), the question is what should the Buyer do when he does not know whether the Seller's mistimed delivery had constituted a fundamental breach or not? According to Mr. Nguyen Cong Phu, the Nachfrist principle is considered as a good answer, as it builds a structural and logical procedure for the parties and the legal authorities to determine the situation of applying contract avoidance in case there is doubt of the existence of fundamental breach.

Although VCL 2005 does not provide direct regulation on the Nachfrist principle, the legal texts instead state that contract can be avoided *upon occurrence of an act*

of breach which the parties have agreed shall be a condition resulting termination of performance of the contract (Article 310.1 VCL 2005). From such wordings, it is recommended that Vietnamese firms, in conducting trade with foreign partners, should incorporate the provision of Nachfrist into the contract to eradicate the legal difference between the two laws regarding the remedy of contract avoidance.

In short, Nachfrist principle is the primary difference between VCL 2005 and CISG 1980, as until now, it only exists clearly under the Convention. For the principle to have binding effects in contracts governing by VCL 2005, it is suggested that the buyer and seller includes the principle into the wordings of contract.

Regarding the Vietnam Commercial Law, the authors recommend the update of Nachfrist principle into the legal text. The update shall greatly assist the lawyers and legal practitioners in resolving many complex cases in which the application of contract avoidance is disputable. The authors also believe this update will soon happen, as according to Mr. Nguyen Cong Phu, our country had already incorporated the Nachfrist principle into our new Civil Code 2015 (Article 424.1).

Contract Penalty

A penalty clause (also called a fixed sum) is defined as a pre-determined sum of money which is to be due under the situation of a breach of contract. The rationales of a penalty clause are to reduce legal costs, [to provide] time for producing evidence, and [to mitigate] the risk of losing litigation or arbitral proceedings due to the required level of proof not being met[7].

In CISG 1980, the provisions relating to penalty are not directly mentioned. The main reason for such incident lies in the different perspectives between civil law and common law shared by the contracting states. According to nations with civil law systems, penalty is accepted under the form of *fixed sums* payable upon a specified breaching act. However, the story is complicated under common law as common law classifies between *liquidated damages* and *penalty* stipulations, enforcing the former while invalidating the latter. Therefore, in order to harmonize the trade laws across countries with different legal systems, UNCITRAL decided to avoid the mention of penalty directly in the draft of CISG 1980. However, with Article 4, the Convention implicitly relevated the remedy of penalty to otherwise the applicable domestic national law. This approach creates the flexibility for application and enforcement of penalty, as the remedy is valid in some jurisdictions while invalid in others.

In contrast to CISG 1980, penalty clause is indicated straightforwardly in the texts of VCL 2005 as Vietnam is a civil-law nation. This remedy is regulated in Article 300 and 301 of VCL 2005. As per Article 300[8], penalty can be applied regardless of whether the breaching acts had caused any

[7] Bruno Zeller, Penalty Clauses: Are they governed by the CSIG? (2011), Pace International Law Review.

[8] Article 300 of VCL 2005: "Penalty for breach [is a remedy whereby] the aggrieved party requires the defaulting party to pay a penalty sum for breach of contract if so agreed in the contract, except in cases of immunity from liability stipulated in article 294 of this Law."

damage. Therefore, besides compensating the aggrieved party of any occurred damage, penalty in Vietnamese law also acquires the function of deterring any action that causes the contract breach. Another notable feature is the level of penalty, which is stipulated in Article 301 that the maximum amount shall not exceed eight per cent of the value of the contractual obligation which is the subject of the breach.

Briefly, up to the present, contract penalty is only stipulated in VCL 2005, while CISG 1980 avoids mentioning the remedy in its legal texts.

Regarding the remedy of penalty, Mr. Pham Van Chat shared that there is a difference between VCL 2005 and the Civil Code 2005 – two main legal texts governing the relations among Vietnamese citizens and foreigners (including commercial relations). While VCL 2005 stipulates the maximum penalty amount of 8 percent, Civil Code 2005 allows the contractual parties to freely negotiate, and thus there is no limit on such ratio. The authors suggest the eradication of such difference by removing the 8 percent ratio from the stipulation of VCL 2005. This update shall further enhance the freedom of contractual parties in their negotiations. Also, the modification shall prevent the parties from breaching the contracts if the economic benefits resulting from such breach surpass the 8 percent penalty.

Damages

In international commerce, claim damages is one of the most frequently applied buyer's remedies when a breach of contract occurs. Therefore, this remedy is regulated in many legislations, including VCL 2005 and CISG 1980. In VCL 2005, claim damages is stipulated in Article 302, while CISG 1980 spends a whole Section 2 of Chapter V (from Article 74 to Article 77) for this particular remedy. It is also regulated in many other legal texts such as in Section 4 of Chapter VII of UNIDROIT Principles of International Commercial Contracts 2010 (PICC). However, despite its popularity in resolving trade disputes, the provisions of claiming damages share different elements among the laws, especially between VCL 2005 and CISG 1980.

Firstly, regarding the right to claim damages, both VCL 2005 and CISG 1980 had mentioned such matter in their legal texts. However, the composition of damage limit in each law is different. On one hand, VCL 2005 regulates that *the value of damages for loss shall comprise the value of the actual and direct loss which the aggrieved party has borne due to [the breach of] the defaulting party as well as the direct profits which the aggrieved party would have earned in the absence of such breach (Article 302). On the other hand, CISG 1980 stipulates damages as the loss, including loss of profit, suffered by the other party as a consequence of the breach* (Article 74), and that the loss must be foreseeable or ought to have been foreseen at the conclusion of the contract. Thus, if actuality and directness of the loss are the main criteria to determine the value of damage in VCL 2005, foreseeability is the benchmark of CISG 1980 in regulating the limit of damage.

About this issue, some scholars consider the provisions of VCL 2005 and CISG 1980 are similar, as actual and direct loss must have been foreseen by the parties. However, the authors support the opposite view on this

matter: actuality and directness of VCL 2005 are different from foreseeability of CISG 1980. It is acceptable to conclude that actual and direct damages are causally connected to the breaching acts, which means that the breach of contracts must directly induce damages. However, the authors believe that no party to a contract can measure and foresee all causal consequences arising from an anticipated breaching act at the time of contract conclusion. Therefore, it is surely that the two laws share different perspectives regarding the remedy of claiming damages.

Secondly, regarding the damage amount in the situation of contract avoidance, VCL 2005 and CISG 1980 also consist of distinctive regulations. If this matter is silent in VCL 2005, which means there is no particular stipulation for it, CISG 1980 provides a meticulous regulations. With Article 76.1[9], the Convention provides two different ways to calculate the damages amount under the circumstance of contract avoidance: damage amount equals (1) the difference between contract price and the price in the substitute transaction (if the buyer has been able to bought the goods from a third-party after avoidance); or (2) the difference between contract price and the current price at the time of avoidance (if there is no replacement transaction after the avoidance).

Thirdly, regarding the interest for delayed payments, both legal texts also acquire different regulations. Under VCL 2005, Article 306 indicates that the aggrieved party (in this case, the buyer) is entitled to demand interest on delayed payment for the goods and services having been delivered, and such interest is appointed to be *the average interest rate applicable to overdue debts in the market at the time of such payment for the delayed period*. Using the market rate is reasonable, because it puts the aggrieved party into a situation as if the aggrieved party had invested this sum of money in the market, and thus is deservedly entitled to earn interest on it.

However, this matter is regulated differently under CISG 1980. The Convention only regulates that the aggrieved party is entitled to claim interest on delayed payments. However, no calculation method is provided in the wording of the relevant Article 78. In practice, CISG 1980 allows legal practitioners to use different sources of commercial law to interpret certain issues being untouched by the Convention. Regarding the calculation of interest, the relevant provisions of PICC 2010 is used to clarify the matter in CISG 1980. Article 7.4.9 of PICC 2010 instructs one way to determine the interest rate on delayed payments: *the rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment*. Therefore, with the interpretation of PICC 2010, it is clearly that VCL 2005 and CISG 1980 regulates differently on the method of interest calculation.

[9] Article 76.1 of CISG 1980: "If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance."

Briefly, the authors examined the differences in damages between CISG 1980 and VCL 2005 from three aspects: (1) the criteria of damage (actuality and directness are the criteria of VCL 2005, while foreseeability is the criteria of CISG 1980); (2) the amount of damage in the situation of contract avoidance (VCL 2005 is silent on this issue, while CISG 1980 provides two situations of determining the damage amount in Article 76.1); and (3) the interest rate for delayed payments (VCL 2005 uses the average market interest rate of overdue debts, while CISG 1980 appoints the short-term lending rate of banks as the interest rate).

Regarding the remedy of damages, the authors recommend the insert of damage calculation into the Vietnam Commercial Law. This modification shall legalize the method of calculating, which saves time and greatly helps the party to claim the damages as estimating the damage amount is one of their duties.

5. Conclusion

As Vietnam is integrating more deeply and wholly into the global economy, the need for a more advanced commercial law is essential. One of ways to enhance the Vietnam Commercial Law is by collating and studying different modern legal sources in the world. A typical example is CISG 1980, which has already been effected in Vietnam since 2017.

The differences between VCL 2005 and CISG 1980 may become legal obstacles for Vietnamese enterprises or lawyers in resolving some typical cases. When submitting applications to join the Convention, Vietnam only declared the reservation of the Contract form under Article 11, 29 and Part II (allowed by Article 12 and 96). However, beside the Contract form, there are also other differences, which may make involved parties confused regarding legal aspects. Therefore, modifications to be consistent shall be essential.

Throughout this paper, the authors have conducted a comparative analysis on the subject of buyer's remedies between VCL 2005 and CISG 1980. The comparison mainly focuses on regulations of: (1) Specific performance; (2) Avoidance of contract and Nachfrist principle; (3) Contract penalty; and (4) Damages. Therefrom, certain explanations and remarks for Vietnamese enterprises have been discussed and suggested. The authors hope that this paper can become a good legal material for Vietnamese enterprises and scholars in digesting CISG 1980 and find inspiration to conduct further researches in improving VCL 2005./.

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