J. East Asia & Int'l L. Vol. 19/No.1 (2026); 109-126
Publication type: Research Article
Section : Notes & Comments
DOI : http://dx.doi.org/10.14330/jeail.2026.19.1.05

# National Courts as Enforcers of International Treaties: Analysis of "Homeward Trend" in Korea's CISG Adjudication

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*This article examines three recent Korean Supreme Court decisions – Texsus (2023), Weihai Jinnuo (2024), and Injection-Moulding (2025) – that mark an inflection point in Korea's application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Earlier Korean cases often bypassed the Convention's analytical framework in favor of familiar domestic law, particularly when filling 'gaps' not expressly resolved by the Convention. Such practices, known as the 'homeward trend,' threatened the treaty's core purpose of providing uniformity and certainty in international sales law. The recent trilogy course-corrects this trend by formally establishing a two-step gap-filling framework within the CISG's own analytical architecture, while largely sustaining lower-court outcomes and replacing domestic doctrine-laden reasoning with one grounded in the Convention itself. With the rise in CISG cases in Korea since 2022, these decisions reflect growing judicial commitment to the Convention's autonomous nature and demonstrate how a domestic court can evolve into a more faithful enforcer of an international treaty.*

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Authors recognize financial support from Hankuk University of Foreign Studies Research Grant.

All the websites cited in this article were last visited on April 30, 2026.

**Keywords**
CISG, Gap-filling, Homeward Trend, Korean Supreme Court, Texsus, Weihai Jinnuo, Injection-Moulding

# 1. Introduction

The United Nations Convention on Contracts for the International Sale of Goods (CISG or Convention) is a multilateral treaty that provides a uniform contract law framework for cross-border commercial transactions across a broad network of contracting States.[1] Its primary aspiration is the promotion of uniformity—and as a result, certainty—in laws applicable to international transactions, which would otherwise be subject to a patchwork of disparate contract laws and private international laws of various trading nations.[2] The Convention, where applicable, displaces the domestic sale-of-goods law of each contracting State and, by Article 7(1), makes clear that it should be interpreted with regard to its "international character" and "the need to promote uniformity in its application."[3]

There is, however, no centralized international commercial court to oversee the uniform application of the Convention. Instead, the burden falls largely upon domestic judiciaries to implement this international treaty. In this decentralized system, national courts effectively serve as "treaty courts," scattered across nations with vastly different laws and legal traditions. Without a supreme interpretive authority, domestic courts have often exhibited the so-called "homeward trend" of interpreting the Convention through the prism of their own local legal concepts and traditions.[4] Given that the homeward trend threatens to fragment the very uniformity and certainty the Convention was created to achieve, monitoring and addressing it is fundamental to safeguarding the core purpose of the treaty.

1 United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, 1489 U.N.T.S. 3 [hereinafter CISG]. It provides a uniform framework for contract formation, the rights and obligations of buyers and sellers, and a system of remedies. As of 2026, the CISG has 97 Contracting States. *See* UNCITRAL, Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status.

2 John Honnold, *The Sales Convention in Action—Uniform International Words: Uniform Application?*, 8 J. L. & Com. 207-8 (1988); CISG pmbl.

3 CISG art. 7(1). *See* John Honnold & Harry M. Flechtner, Uniform Law for International Sales under the 1980 United Nations Convention 22-3 (5th ed. 2021).

4 *See, e.g.*, Ndubuisi Nwafor et al., *Reimagining Transnational Validity under the CISG: A Gateway to* "*Homeward Trend*" *Interpretations*, 17(3) J. Int'l Trade L. & Pol'y 156 (2018); Bruno Zeller, *Analysis of the Cultural Homeward Trend in International Sales Law*, 10(1) Victoria U. L. & Just. J. 131 (2021).

Korea presents a particularly instructive case study in this regard.[5] Even after the Convention's entry into force in Korea in 2005, the Korean Supreme Court decisions addressing the CISG were sparse, with only a handful of isolated rulings spread across nearly two decades. This pattern shifted dramatically after the Supreme Court's *Weisz* decision in 2022,[6] which led to a marked increase in the Convention's application in Korean courts.[7] Prior to *Weisz,* courts treated the absence of party dispute over governing law as a tacit agreement to exclude the Convention in favor of Korean domestic law.[8] The Supreme Court rejected this approach, holding that courts have an *ex officio* duty to investigate and apply the correct governing law in cases with foreign elements, even where the parties do not dispute the application of Korean law.[9] Naturally, Korean courts have applied the Convention with increasing frequency since *Weisz*.[10]

The more significant question, however, is whether the rising number of CISG decisions can also produce a commensurate advance in preservation of the Convention's core aims of uniformity and certainty. The article closely examines three recent cases in which the Supreme Court sought to correct the tendency of lower courts to resort to domestic law whenever a perceived "gap"—a matter not addressed in the Convention—arises in applying the CISG. In these cases, the Court articulates a two-step analytical framework to govern this "gap-filling" exercise under Article 7(2).

The authors argue that these cases together mark an important course-correction by the Korean Supreme Court and signal its intention to move away from the homeward trend that often characterized the country's earlier CISG jurisprudence. To show this, the article proceeds in three parts. Part two will

5 The CISG entered into force for the Republic of Korea on March 1, 2005.

6 Supreme Court Decision 2021Da269388, Supreme Court (S. Kor.), Jan. 13, 2022 [hereinafter Weisz Group v. Kono Corporation], https://www.scourt.go.kr/sjudge/1642467025843_095025.pdf.

7 *See, e.g.*, Jong Hyeok Lee, *Korean Court Decisions on CISG (2021-2024)* [한국법원의 국제물품매매협약(CISG): 재판례 (2021-2024)], 43(4) Com. L. Rev. [상사법연구] 539-40 (2025).

8 Philbok Lee, A Systematic Compilation and Analysis of Korean Court Decisions on CISG Issues [우리법원의 CISG 쟁점판결례에 대한 체계적 정리와 분석], 30(1) Int'l Trade L. Rev. [국제거래법연구] 8-9 (2021); TaeKun Ahn, *Trends in Precedents Regarding Intrinsic and Extrinsic Defects for the Application of the UN Convention on Contracts for the International Sale of Goods* [국제물품 매매 계약에 관한 UN협약의 적용을 위한 내적흠결과 외적흠결에 대한 판례 경향], 38(4) Int'l Com. [국제상학] 9 (2023).

9 The plaintiff, a Netherlands-based corporation, supplied wristwatches to the defendant, a Korean corporation, and subsequently sued for unpaid balances. Both lower courts applied Korean law as the default governing law, as neither party disputed it. The Supreme Court reversed, holding that because both the Netherlands and Korea are CISG Contracting States, the Convention applied as a matter of law regardless of party silence. The Court further held that the mere absence of a dispute over governing law does not constitute a tacit agreement to exclude the Convention under Article 6. Weisz Group v. Kono Corporation, *supra* note 6.

10 Lee, *supra* note 7, at 539-40.

survey the doctrinal framework of Article 7 and examine the historical homeward trend in Korean CISG adjudication, illustrating the range of issues on which Korean courts have bypassed the Convention's own analytical resources in favor of familiar domestic law. Part three will provide a detailed analysis of the *Texsus, Weihai Jinnuo,* and *Injection-Moulding* Supreme Court decisions. Part four will evaluate the framework emerging from this trilogy, considering its contributions and remaining limitations.

## 2. "Homeward Trend" in Korea

Article 7 of the Convention is the quintessential guardian against undue reliance on domestic law and legal concepts. Yet, as discussed below, courts have not always honored its interpretive hierarchy. Article 7 consists of two distinct directives. Paragraph 1 addresses interpretation: courts must interpret the Convention with regard to its international character, the need for uniform application, and the observance of good faith in international trade. Paragraph 2 governs gap-filling: questions governed by the Convention but not expressly settled in it must first be resolved by reference to the "general principles on which [the Convention] is based," and only in the absence of such principles by reference to "the law applicable by virtue of the rules of private international law," i.e., domestic law designated through conflict-of-laws rules.[11]

The interpretive duty imposed by Article 7(1) requires courts to seek outcomes consistent with the Convention's international character, prohibiting the "homeward trend"—an ethnocentric interpretation that imports domestic legal concepts into the Convention.[12] Courts should therefore avoid resolving CISG questions by either analogizing from domestic-law categories or applying domestic analytical frameworks that the Convention was designed to supersede. This discipline extends to gap-filling under Article 7(2). The directive to seek the "general principles on which the Convention is based" refers to principles that can be derived internally from the Convention itself, through induction from

11 CISG art. 7(2). It provides: "Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."

12 UNCITRAL, Digest of Case Law on the United Nations Convention on the International Sale of Goods (2016), art. 7, ¶¶ 4-5 [hereinafter UNCITRAL Digest], https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/cisg_digest_2016.pdf; Nwafor et al., *supra* note 4; Zeller, *supra* note 4. *See also* Cheol-soo Kim, *Review of Interpretation Criteria for CISG's Contract of Sale* [CISG의 매매계약에 대한 해석기준의 재검토], 34 Int'l Com. [국제상학] 23-5 (2019).

its rules, structure, and policy choices. Only where no such internal principle can be identified may courts resort to domestic law through the forum's private international law rules. Courts that proceed directly to domestic law without undertaking this prior inquiry risk inconsistency with Article 7(2).[13]

Academic literature has long distinguished two categories of gaps in this context.[14] An external gap (*lacuna praeter legem*) arises when a matter falls entirely outside the Convention's scope, *e.g.*, because Article 4 expressly excludes it.[15] An internal gap (*lacuna intra legem*), by contrast, arises where a matter is within the Convention's scope but not expressly resolved by its provisions. While external gaps may be addressed directly by domestic law, internal gaps must first pass through the filter of the Convention's general principles before recourse to domestic law becomes permissible.

At times, Korean courts have not fully adhered to Article 7's interpretive framework. Courts have categorized commercially significant issues as external gaps—thus subject to domestic law—without sufficient justification.[16] Even for internal gaps, courts have also been quick to apply domestic law without conducting the necessary Article 7(2) inquiry into the Convention's general principles. For instance, regarding the currency of payment, the Seoul High Court in one case identified Korea as the place of payment—and therefore Korean Won as the currency of payment—because the suit was filed in Korea, which is a conclusion difficult to square with Article 57(1)(a)'s autonomous rule fixing the place of payment at the seller's place of business.[17] By contrast, the UNCITRAL

13 UNCITRAL Digest art. 7, ¶¶ 10-11. *See also* CISG art. 7(2). It provides that the gaps are to be settled first by "general principles on which [the Convention] is based" and only in their absence by domestic law via private international law rules.

14 Zeller, *supra* note 4. *See also* Camilla Andersen, *The Global Jurisconsultorium of the CISG Revisited*, 13(1) Vindobona J. Int'l Com. L. & Arb. 43 (2009).

15 CISG art. 4. It provides that the Convention "governs only the formation of the contract of sale and the rights and obligations of the seller and buyer arising from such a contract," and expressly excludes questions of validity and property.

16 Lee, *supra* note 7, at 482-3. It documents that Korean court classifications of the following as external gaps to be governed directly by the applicable domestic law: agency and apparent authority; fictitious declarations and collusion; fraud; mistake; extinctive prescription; set-off; currency of payment and surrogate payment claims; rate of delay damages; tort liability; liability of a named lender; and successor liability.

17 High Court Decision 2008Na14857, Seoul High Court (S. Kor.), July 23, 2009. At the outset of its reasoning, the court stated that any "gaps" in the Convention should be resolved by the domestic law designated by the rules of private international law. For other Korean decisions in which courts similarly resorted to domestic law when determining the currency of payment, *see* High Court Decision 2011Na31258, Seoul High Court (S. Kor.), Sept. 27, 2012; High Court Decision 2012Na98043, Seoul High Court (S. Kor.), Oct. 18, 2013; High Court Decision 2015Na4391, Seoul High Court (S. Kor.), Dec. 16, 2016. By contrast, some courts have applied the Convention's own provisions without resort to domestic law itself. *See, e.g.*, High Court Decision 2015Na2074433, Seoul High Court (S. Kor.), Dec. 20, 2016 (applying the CISG to a dispute between a Singaporean buyer and a Korean seller

Digest reports that most courts worldwide derive the applicable currency from the principle reflected in Article 57 — the currency of the seller's place of business —rather than from domestic law.[18]

Similarly, on the issue of set-off, Korean courts have been quick to apply domestic law without properly considering whether the issue is governed by the Convention and whether the Convention's own provisions supply an answer.[19] On this point, the CISG Advisory Council has taken the view that set-off between CISG-governed monetary claims should be governed by both the Convention's payment provisions and the general principle of concurrent performance derivable from Articles 58(1), 81(2), and 88(3), which is a position adopted by the supreme courts of Germany and Austria, among others.[20] In treating both currency of payment and set-off as external gaps, Korean courts proceeded directly to domestic law without first exhausting the Convention's own analytical resources under Article 7(2).[21]

A similar pattern appears in a marble supply contract between a Vietnamese seller and a Korean buyer, in which the Seoul High Court held that, while the Convention governed the contract, the central issue — whether the parties had agreed to modify the contract price — should be resolved under Korean law on "work contracts" because the contract exhibited characteristics of a "work contract" relationship.[22] In effect, the court employed a domestic analytical framework — a system of contract classification drawn from Korean law — to determine the Convention's scope, without any meaningful engagement with the

concerning non-conforming goods and awarding damages under Articles 35, 74, and 77 of CISG).

18 UNCITRAL Digest art. 57, ¶ 7.

19 "Set-off" is the extinguishment of reciprocal monetary obligations through a party's unilateral declaration. In the CISG context, a typical scenario involves a buyer who owes the contract price but simultaneously holds a damages claim against the seller for non-conforming goods and declares that the two obligations cancel each other out to the extent they overlap. *See*, *e.g.*, High Court Decision 2008Na14857, Seoul High Court (S. Kor.), July 23, 2009; High Court Decision 2011Na31258, 31661 Seoul High Court (S. Kor.), Sept. 27, 2012.

20 CISG, CISG Advisory Council Opinion No. 18, https://cisgac.com/opinions/cisgac-opinion-no-18. The CISG Advisory Council (CISG-AC) is a private scholarly body established in 2001 by the Institute of International Commercial Law at Pace University and the Centre for Commercial Law Studies, Queen Mary University of London. Although not binding, its opinions are widely regarded as authoritative secondary sources on CISG interpretation.

21 Lee, *supra* note 7, at 482-3 (identifying multiple issues including set-off, currency of payment, and interest rates, that Korean courts have treated as external gaps subject to domestic law).

22 High Court Decision 2020Na2043471, Seoul High Court (S. Kor.), Jan. 20, 2022. The court acknowledged CISG applicability but characterized the contract as a "work contract" (도급) relationship and declined to apply the Convention without examining its own scope provisions. "Work contract" is a contract type under Korean civil law in which one party undertakes to complete a specified work and the other agrees to pay remuneration upon completion; Korean courts distinguish it from sales contracts by asking whether the essence of the agreement lies in the production of a result or in the transfer of ownership of goods. *See also* Korean Civil Code arts. 664-5, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=29453&lang=ENG.

Convention's own provisions and general principles. Korean work contract law's requirements for contract price modification are considerably more formalistic — essentially requiring an explicit agreement — and sit in tension with Article 8(3), which directs courts to consider all relevant circumstances when determining whether a modification has occurred. Some commentators have argued that the outcome in this case might have differed under a proper analysis of the nature of the contract and the relevant articles of the Convention.[23]

In short, Korean courts have, on a range of issues, shown a readiness to superimpose domestic law and concepts onto disputes otherwise governed by the Convention.[24] Until recently, the cumulative picture has been that of a jurisdiction which has yet to develop a consistent analytical framework for treating the Convention as an autonomous international instrument. Rather than engaging with the Convention on its own terms, courts have in many instances defaulted to familiar domestic laws and concepts when resolving issues arising under contracts that they nonetheless acknowledge are governed by the Convention.[25]

# 3. Recent Korean Supreme Court Decisions on the CISG

## A. Texsus S.p.A. v. Hansung Fiber Co., Ltd. (Supreme Court of Korea, Case No. 2021Da255655, 27 September 2023)

*Texsus S.p.A. v. Hansung Fiber Co., Ltd.* (*Texsus*) arose from a textile supply contract between an Italian wholesaler and a Korean manufacturer, under which the agreed quality specifications prohibited the presence of optical brighteners.[26]

23 *See, e.g.,* Lee, *supra* note 7, at 507-8.

24 As another example, on the interest rate for delayed payment of damages, Korean courts have applied domestic rates without conducting the internal search first required by Article 7(2). *See* Supreme Court Decision 2009Da77754, Supreme Court (S. Kor.), Oct. 25, 2012 [hereinafter Supreme Court Decision 2009Da77754]; CISG, CISG Advisory Council Opinion No. 14, at ¶ 3.2 (Interest under Article 78 CISG) [hereinafter CISG Advisory Council Opinion No. 14], https://cisgac.com/opinions/cisgac-opinion-no-14.

25 Lee, *supra* note 7, at 482-3 (identifying multiple issues that Korean courts have treated as external gaps subject to domestic law). Note the cases cited in *supra* note 17 (collection of Korean decisions applying domestic law rather than CISG provisions for issues such as currency of payment).

26 Supreme Court Decision 2021Da255655 (Sept. 27, 2023) (S. Kor.) [hereinafter Texsus v. Hansung], https://www.scourt.go.kr/sjudge/1696913951477_135911.pdf. Note that Korean court decisions generally do not carry official page numbers. Nonetheless, pinpoint citations to the three principal Supreme Court decisions discussed in Part III of this article are provided for ease of reference and referred to page numbers in the official PDF versions of those decisions.

Following delivery, the buyer discovered that the goods contained optical brighteners and sought damages under CISG Article 74, including claims for resale losses, post-delivery testing expenses, and compensation paid to downstream purchasers.[27] The lower courts held—and the Supreme Court affirmed—that the CISG governed the contract under Article 1(1), as the parties' places of business were in different Contracting States, and that the seller had breached Article 35(1) by delivering non-conforming goods.[28] The central dispute—and the broader doctrinal significance of the case—lies in how the courts approached the question of liability apportionment, a matter not expressly settled in the CISG. The trial court awarded damages on an item-by-item basis.[29]

On appeal, the Daegu High Court reversed and introduced a proportional framework, reducing the seller's liability to 65% of the claimed damages. It justified this reduction on the grounds that the buyer had failed to conduct a timely inspection, that the goods met general safety standards, and that the widespread industry use of optical brighteners was something a sophisticated textile wholesaler in the buyer's position should have anticipated.[30] The Daegu High Court reached this result by relying on Korean domestic legal principles of comparative fault and equitable apportionment, without first asking whether the CISG's own provisions could supply the relevant standard.[31] This approach—applying domestic gap-filling without exhausting the Convention's internal resources—exemplifies precisely the subtle form of the homeward trend discussed above: courts that nominally apply the CISG but allow domestic doctrines to displace the Convention's own analytical framework.[32]

The Supreme Court affirmed the 65% reduction but fundamentally reframed the doctrinal basis to one grounded in the CISG itself.[33] It held that the absence of an express rule on liability apportionment in the CISG constitutes an internal gap which must be resolved first by reference to the Convention's own general

27 High Court Decision 2020Na20907, Daegu High Court (S. Kor.), June 16, 2021 [hereinafter Daegu High Court Decision 2020Na20907] https://www.law.go.kr/LSW/precInfoP.do?precSeq=238731.

28 Texsus v. Hansung, at 3-4 (affirming CISG applicability and breach of Article 35); Daegu High Court Decision 2020Na20907; District Court Decision 2018Gahap200864, Daegu District Court (S. Kor.), Jan. 9, 2020 [hereinafter Daegu District Court Decision 2018Gahap200864].

29 Texsus v. Hansung, at 2-3; Daegu District Court Decision 2018Gahap200864.

30 Daegu District Court Decision 2018Gahap200864.

31 *Id.* (applying Korean law to limit liability in the absence of an express CISG rule).

32 Zeller, *supra* note 4, at 136 (noting that "in most reported cases the courts did recognize that the CISG applied but when interpreting provisions of the CISG court reverted to the application of domestic law instead of the applicable principles of the Convention.")

33 Texsus v. Hansung, at 2-3.

principles under Article 7(2), not by immediate resort to domestic law.[34] Drawing on Article 77 (the duty to mitigate loss), Article 79 (exemption from liability for impediments beyond a party's control), and Article 80 (preclusion of claims where a party's own conduct caused the other's non-performance), the Supreme Court reasoned that these rules reflect a general principle of equitable allocation of loss inherent in the Convention itself.[35] Taken together, these provisions indicate that the CISG does not require a breaching party to bear losses attributable to the aggrieved party's own conduct or to circumstances beyond the breaching party's control. The 65% reduction was therefore not an exercise in domestic law, but an application of the Convention's internal logic.

On Texsus's claims for testing costs and compensation paid to downstream purchasers, the Supreme Court reversed and remanded.[36] The Daegu High Court had refused to award these costs as damages without much analysis, citing both Article 74 and non-CISG Korean precedent on contract damages.[37] Under Article 74 of the CISG, however, recoverable loss clearly includes what the breaching party foresaw or ought to have foreseen at the time of contract formation as a possible consequence of breach, assessed objectively from the perspective of a reasonable person of the same kind in the same circumstances.[38] Explaining this standard in detail, the Supreme Court held that a fiber manufacturer supplying goods for resale in international textile supply chains would have foreseen that non-conforming goods could trigger post-delivery inspection costs and downstream contractual liabilities.[39] Both types of loss therefore fell within Article 74's recoverable range. The Supreme Court thus found that Article 74 is a self-contained CISG standard that must not be displaced by domestic doctrines.[40]

## B. Weihai Jinnuo Fashion Co., Ltd. v. J S Co. (Supreme Court of Korea, Case No. 2023Da288772, 7 March 2024)

The 2024 Supreme Court decision in *Weihai Jinnuo Fashion Co., Ltd. v. J S Co.* took the gap-filling framework established in *Texsus* a step further by requiring courts

34 *Id.* at 2.

35 *Id.* at 2-3. *See also* Jong Hyeok Lee, *Korean Court Decisions on CISG (2021–2024)(II)* [한국법원의 국제물품매매협약 (CISG) 재판례 (2021–2024)(II)], 34(2) Int'l Trade L. Rev. [국제거래법연구] 113 (2025).

36 Texsus v. Hansung, at 2-3.

37 Daegu High Court Decision 2020Na20907.

38 CISG art. 74. It limits recoverable damages to losses the breaching party "foresaw or ought to have foreseen at the time of the conclusion of the contract...as a possible consequence of the breach of contract."

39 Texsus v. Hansung, at 4.

40 *Id. See also* CISG art. 74.

to resolve a logically prior question: before asking how to fill a gap, a court must first determine what kind of gap it faces.[41] This dispute arose from a Chinese garment manufacturer's (Weihai Jinnuo) claim for unpaid purchase price and interest against a Korean buyer (J S).[42] The buyer raised two defenses: (1) the goods were non-conforming and warranted a price reduction under Article 50 or avoidance under Article 49; (2) in the alternative, its payment obligations had been discharged or modified through an intermediary allegedly acting as the seller's authorized agent.[43] The lower courts rejected the non-conformity defense on the basis that the buyer failed to notify the non-conformity in time, recognizing that the parties had exercised their autonomy under Article 6 to contract for a strict 30-day notice period, which supplanted the default "reasonable time" standard of Article 39(1).[44] This aspect of the lower courts' analysis was affirmed without significant elaboration by the Supreme Court.[45]

The problem arose with the agency question, as the lower courts had failed to ask whether the issue was within or outside the CISG's scope at all, instead proceeding directly to Chinese law simply because it was the contract's supplementary governing law. As such, the lower courts took a shortcut that treated the supplementary law of the sales contract as an automatic answer to any gap, regardless of its nature.[46] The Supreme Court affirmed the judgment for the seller but used the occasion to clarify a mandatory threshold step in the gap-filling methodology. The Supreme Court held that whenever an issue arises that is not expressly settled by the Convention, courts must first characterize the gap as either internal or external before determining which mode of gap-filling applies.[47]

Agency authority—a matter going beyond the parties' substantive rights and obligations under the sales contract—was classified as an external gap falling outside the CISG's scope, so that it should be subject directly to private international law rules, not to any prior search for CISG principles.[48] The

41 Supreme Court Decision 2023Da288772, Supreme Court (S. Kor.), Mar. 7, 2024 [hereinafter Weihai Jinnuo Fashion v. J S Co.], https://www.scourt.go.kr/sjudge/1711094250067_165730.pdf.

42 High Court Decision 2022Na2026906, Seoul High Court (S. Kor.), Sept. 21, 2023 [hereinafter Seoul High Court Decision 2022Na2026906], https://www.law.go.kr/LSW/precInfoP.do?precSeq=240081.

43 Central District Court Decision 2019Gahap539010, Seoul Central District Court (S. Kor.), June 15, 2022 [hereinafter Seoul Central District Court Decision 2019Gahap539010].

44 Seoul Central District Court Decision 2019Gahap539010; Seoul High Court Decision 2022Na2026906.

45 Weihai Jinnuo Fashion v. J S Co., at 3-4.

46 Seoul Central District Court Decision 2019Gahap539010; Seoul High Court Decision 2022Na2026906.

47 Weihai Jinnuo Fashion v. J S Co., at 1-2.

48 *Id.* at 2-3.

Supreme Court emphasized that even for external gaps, the applicable domestic law must be determined through a proper choice-of-law analysis under the forum's conflict-of-laws rules—courts may not simply import the supplementary governing law of the sales contract as a catch-all.[49] Although the correct law here happened to be Chinese law, arriving at that result required a distinct analytical step that the lower courts had not clearly articulated.[50]

## C. Korean Injection-Moulding Machines Case (Supreme Court of Korea, Case No. 2021Da242185, 27 March 2025)

The *Korean Injection-Moulding Machines* Case decision addressed a dispute between a Korean manufacturer (seller) and a Russian company (buyer) over a contract for the supply and installation of injection-moulding and razor assembly equipment.[51] Under a supplementary agreement, the buyer's installment payments were scheduled to begin on the day a "commissioning completion certificate" was signed.[52] Following protracted disputes, the buyer refused to pay the outstanding balance, citing defective equipment and arguing that its unsigned commissioning certificate was an unfulfilled condition precedent to payment.[53] Both lower courts ruled in favor of the seller, invoking the doctrine of "conduct against good faith" of Article 150(1) of the Korean Civil Code.[54] The lower courts reasoned that the payment obligation matured once the buyer obstructed the commissioning process—specifically, the buyer's bad faith refusal to sign the commissioning completion certificate was treated as triggering the payment obligation under Article 150(1).[55] Neither party disputed the court's application of the Korean Civil Code.

The Supreme Court dismissed the appeal but corrected the methodological

49 *Id*.

50 *Id.* at 3. The Supreme Court dismissed the appeal by the buyer and affirmed the High Court's holding in favor of the seller.

51 Supreme Court Decision 2021Da242185, Supreme Court (S. Kor.), Mar. 27, 2025 [hereinafter Injection-Moulding Case], https://www.scourt.go.kr/sjudge/1743642915217_101515.pdf.

52 District Court Decision 2018Gahap101326, Suwon District Court Anyang Branch (S. Kor.), July 23, 2020 [hereinafter Suwon District Court Decision 2018Gahap101326], https://www.law.go.kr/precInfoP.do?mode=0&precSeq=605679.

53 High Court Decision 2020Na19254, Suwon High Court (S. Kor.), May 13, 2021 [hereinafter Suwon High Court Decision 2020Na19254], https://www.law.go.kr/precInfoP.do?mode=0&precSeq=605711.

54 Suwon District Court Decision 2018Gahap101326; Suwon High Court Decision 2020Na19254.

55 *Id*. *See also* Korean Civil Code art. 150(1). It provides: "where a party who would be prejudiced by the fulfillment of a condition has, in bad faith, prevented its fulfillment, the other party may assert that the condition has been fulfilled."

errors of the lower courts on two grounds,[56] each of which illustrates a distinct dimension of the "homeward trend" at issue in this article. First, reaffirming its landmark 2022 *Weisz* holding, the Court reiterated that in disputes involving foreign elements, courts bear an affirmative *ex officio* duty to investigate and apply the correct governing law.[57] The mere failure of both parties to raise the CISG is not a tacit exclusion under Article 6. The *Injection-Moulding* decision reinforces the principle that even where neither party contests the domestic law framework, and even where the substantive result is unchanged, the Supreme Court must insist on methodological fidelity to the CISG.[58]

Second, and more importantly, the Supreme Court mandated autonomous contract interpretation under CISG's Article 8, displacing the lower courts' reliance on the Korean Civil Code's doctrine of "conduct against good faith." The commissioning clause had to be interpreted not through the prism of Korean civil law concepts, but by asking what a reasonable person of the same kind in the same circumstances would have understood at the time of contracting, in accordance with Article 8(2) and (3) of the Convention.[59] Under the objective standard, no reasonable actor would interpret a "commissioning completion certificate" requirement as conferring on the buyer a unilateral and indefinite power to suspend payment. The payment obligation therefore matured once performance was achieved, regardless of whether the certificate had been formally signed. The Supreme Court's intervention here shows that (1) the "homeward trend" can operate equally in contract interpretation and (2) Article 8 provides an autonomous interpretive framework that must not be displaced by domestic doctrines of good faith or contractual construction.[60]

## 4. Implications of the Recent Supreme Court Cases

These three Supreme Court decisions issued between 2023 and 2025 constitute a trilogy in which the Court has begun to identify and correct several mechanisms through which the "homeward trend" operates in Korean CISG adjudication—not by reversing outcomes, but by replacing defective methodological foundations

56 The Supreme Court affirmed the lower courts' holding by dismissing the buyer's appeal, while explicitly correcting the methodological errors on two grounds. *See* Injection-Moulding Case, at 8.

57 *Id.* at 4. *See also* Weisz Group v. Kono Corporation, at 4.

58 Injection-Moulding Case, at 8.

59 *Id.* at 5.

60 *Id.* at 7-8.

with reasoning grounded in the Convention itself.[61] These decisions can be synthesized into two interlocking legal tests that together comprise the Court's emerging framework for CISG adjudication.

## A. Two Legal Tests: Gap Classification and the Hierarchy of Resolution

One is the gap classification test, drawn principally from *Weihai Jinnuo* and subsequently confirmed in *Injection-Moulding*. Whenever a question arises that is not expressly settled by the Convention, a court must first ask: is this issue within the scope of the CISG? If the answer is yes, the gap is internal and must be resolved by reference to the CISG's general principles before any resort to domestic law. If the answer is no—if the issue falls outside the substantive scope of the Convention—, the gap is external and may be resolved directly through the forum's private international law rules, without any prior search for CISG principles. This simple framework—and yet one that Korean courts had not previously articulated explicitly—now occupies a mandatory place in the Court's gap-filling methodology.[62]

The other is the hierarchical resolution test, drawn from *Texsus* and extended in *Injection-Moulding*. Once a gap is classified as internal, courts must work through a strict sequence: first, identify whether specific Convention provisions supply an answer; second, if not, derive a general principle by induction from the Convention's structure, policy choices, and related provisions; and only if no such principle can be identified, resort to applicable domestic law determined through private international law rules.[63]

The trilogy further confirms that the "homeward trend" operates beyond gap-filling *per se*. Before invoking domestic doctrines of contract construction, courts must first apply the Convention's autonomous interpretive standard under Article 8—the perspective of a "reasonable person of the same kind in the same

61 Zeller, *supra* note 4, at 131, 133 & 141-2 (defining "classical homeward trend" as cases where courts purport to apply the CISG but revert to domestic law, and insisting that a sound understanding of art. 7(1) is essential for a proper CISG decision).

62 Weihai Jinnuo Fashion v. J S Co., at 1-2; Injection-Moulding Case, at 5-6.

63 Texsus v. Hansung, at 2-3 (identifying an internal gap and resolving it through the Convention's general principles under CISG art. 7(2) before any resort to domestic law); Injection-Moulding Case, at 5-6 (reaffirming that matters governed but not expressly settled by the CISG must be resolved first by reference to the Convention's general principles, with domestic law available only as a last resort through private international law); *see also* André Janssen & Sörren Kiene, *The CISG and Its General Principles*, *in* CISG Methodology 261 (André Janssen & Olaf Meyer eds., 2009).

circumstances."[64] Together, the gap-filling framework and the Article 8 obligation move Korea's CISG jurisprudence closer to the CISG's aspiration for uniformity.[65] The significance of the Supreme Court's analytical framework becomes clearer when viewed against the practice of more established CISG jurisdictions.[66] Even in Germany, a leading CISG jurisdiction with decades of jurisprudence, courts have at times resolved Article 7(2) issues without articulating the gap-filling methodology employed, leaving the doctrinal path unstated.[67] The Korean Supreme Court now makes this methodology explicit and mandatory, requiring courts to identify the gap, classify it as internal or external, and sequence the analysis in accordance with the Convention's interpretive hierarchy. In doing so, the Supreme Court signals that the analytical path matters as much as the outcome in CISG adjudication.[68]

## B. Policing the "Homeward Trend"

Scholarship on the "homeward trend" has long noted that its most persistent form operates not when courts refuse to apply the CISG, but when they apply the Convention in part and yet allow domestic legal doctrines to quietly override the analytical framework, often without recognizing they have done so.[69] In the three cases, the lower courts were not hostile to the CISG; they acknowledged its applicability and applied its provisions in part. The problem was that at a moment of analytical difficulty, they reached instinctively for familiar domestic tools. Notably, the Supreme Court's correction in each case was methodological rather than substantive: sustaining the outcome while systematically replacing the domestic doctrine-laden reasoning with one grounded in the Convention itself. The Court is thereby signaling to the lower courts that the CISG's own resources are sufficient to resolve such disputes and yield the same or similar result that domestic law would produce—removing the practical temptation to

64 CISG art. 8(2); Injection-Moulding Case, at 5.

65 Arguably, contract interpretation under Article 8 is a form of internal "gap-filling." *See* Ingeborg Schwenzer & Ulrich Schroeter, *Article 8 CISG: Interpretation of Parties' Statements or Conduct*, *in* Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG) ¶ 4 (Ingeborg Schwenzer & Ulrich G. Schroeter eds., 5th ed. 2016).

66 Bruno Zeller, CISG and the Unification of International Trade Law 33-4 (2007). It examines the relationship between Article 7's interpretive framework and the achievement of uniformity across CISG jurisdictions.

67 *Id.* at 35.

68 *Supra* notes 26-60 and accompanying text (discussing the three recent Korean Supreme Court decisions which underscored that the analytical methodology is central to proper CISG adjudication).

69 Zeller, *supra* note 66; Andersen, *supra* note 14.

skip the CISG analysis.[70]

Furthermore, by reaffirming in *Injection-Moulding* that lower courts must apply the CISG on their own initiative—regardless of whether both parties raise it or dispute the governing law—the Court has strengthened its message against another form of the "homeward trend": the structural default to domestic law that results not from active judicial choice but from the parties' own silence.[71] This principle, grounded in Korea's constitutional requirement to apply international treaties as domestic law,[72] combined with the framework established above, advances Korean CISG jurisprudence toward greater uniformity. Notably, a subsequent Supreme Court decision has already begun to apply this framework, further reinforcing the trajectory identified in this trilogy.[73]

These developments must still be assessed with a degree of caution. The three decisions examined here are all Supreme Court rulings, and the extent to which the framework they articulate has been absorbed by the lower courts remains an open empirical question.[74] The Supreme Court's corrections that affirm outcomes while revising reasoning may, in practice, have limited disciplinary effect if the lower courts treat the homeward trend as a harmless shortcut. Preliminary survey evidence from the literature confirms that lower courts since *Weisz* have increased their CISG application in quantitative terms, but a systematic assessment of whether they have internalized the gap-filling hierarchy of *Texsus* and *Weihai Jinnuo* remains to be undertaken.[75]

## C. Uniformity and *Jurisconsultorium*

Despite these advances, the recent cases also reveal important limits. As Honnold observed at the Convention's entry into force, uniformity in international commercial law may be best achieved through shared cross-border judicial

70 Texsus v. Hansung, at 2-3; Weihai Jinnuo Fashion v. J S Co., at 1-2; Injection-Moulding Case, at 4-5.

71 Injection-Moulding Case, at 4 (applying the structured gap-filling approach under Article 7(2)).

72 R.O.K. Const. art. 6(1). It reads as "Treaties duly concluded and promulgated under the Constitution … shall have the same effect as domestic law."

73 Supreme Court Decision 2025Da216952, Supreme Court (S. Kor.), Feb. 26, 2026 (reaffirming the *ex officio* duty to determine the governing law, applying CISG Article 1(1), and distinguishing between internal and external gaps while citing Texsus (2023) and Weihai Jinnuo (2024)).

74 According to public databases accessible to authors, there are several trial court decisions decided in the period between Texsus (Sept. 2023) and Injection-Moulding (Mar. 2025)—that is, after the gap-filling framework had been partially established by Texsus and Weihai Jinnuo (Mar. 2024) but before the trilogy was complete. *See*, *e.g.*, 2022Gahap526908 (main claim), 2022Gahap560779 (counterclaim), Seoul Central District Court (S. Kor.), Nov. 22, 2024; District Court Decision 2023Gadan120904, Suwon District Court Anyang Branch (S. Kor.), Oct. 25, 2024.

75 Lee, *supra* note 7; Lee, *supra* note 8.

application and consistent interpretation.[76] This mandate is codified in Article 7(1), which imposes an affirmative duty on Contracting States to consider the Convention's "international character" and "the need to promote uniformity in its application."[77] To fulfill this mandate, scholars Vikki Rogers and Albert Kritzer introduced the concept of the global *jurisconsultorium*—a shared interpretive sphere wherein jurists and courts cross jurisdictional boundaries to consult one another's decisions.[78] As Andersen emphasizes, the CISG's ultimate effectiveness depends on national courts recognizing themselves as participants in a collective transnational dialogue.[79]

Yet, the Korean Supreme Court's current approach remains largely self-referential. The three decisions develop an internal methodology — one that is fully consistent with the interpretive approach championed in leading CISG scholarship — but they do so without citing foreign case law or engaging with the international secondary literature.[80] The decisions do not invoke the UNCITRAL Digest, the CISG Advisory Council opinions, or comparative jurisprudence from Germany, Austria, or Switzerland—jurisdictions with long-standing and well-documented CISG practice. For instance, the interest rate question in *Weihai Jinnuo* illustrates this gap. The Supreme Court failed to consider the CISG Advisory Council's position that the full-compensation principle under Article 74 should constrain the choice of domestic rate, leaving an important question of CISG methodology unresolved.[81] While these three cases have made some strides toward uniformity by articulating a gap-filling framework, the outward step—for instance, citing foreign decisions and engaging with the CISG Advisory Council opinions—would be the natural next stage in the trajectory that these decisions have set in motion.

76 Honnold, *supra* note 3, § 92, at 125.

77 CISG art. 7(1).

78 Vikki Rogers & Albert Kritzer, *A Uniform International Sales Law Terminology*, *in* Festschrift in Honor of Peter Schlechtriem on His 70th Birthday [Festschrift für Peter Schlechtriem zum 70. Geburtstag] 223, 227-8 (Ingeborg Schwenzer & Günter Hager eds., 2003).

79 Camilla Andersen, *The Uniform International Sales Law and the Global Jurisconsultorium*, 24(2) J. L. & Com. 175 (2005).

80 None of the decisions – (i) Texsus S.p.A. v. Hansung Fiber Co., (ii) Weihai Jinnuo Fashion Co. v. J S Co., (iii) Injection-Moulding Case – cites foreign case law or international secondary sources.

81 On the question of interest rate applicable to unpaid balance, the trial court in this case treated Article 78's silence regarding the applicable interest rate as an internal gap and proceeded under Article 7(2). However, finding that there are no general principles that could be drawn from the Convention on interest rates, the trial court ultimately turned to Chinese law as the supplementary governing law designated through private international law. *See* Seoul Central District Court Decision 2019Gahap539010. The Supreme Court did not speak on this matter in appeal. *See also* CISG Advisory Council Opinion No. 14, *supra* note 24.

# 5. Conclusion

The Korean Supreme Court's recent CISG jurisprudence offers an interesting case study on how courts can course-correct the so-called "homeward trend" in applying the CISG. The trilogy—*Texsus*, *Weihai Jinnuo*, and *Injection-Moulding*—did not engage in any dramatic reorientation of commercial outcomes. Rather, the significance of these cases lies instead in the Supreme Court's insistence that the path to the outcome must proceed through proper reasoning—the Convention's own analytical architecture—to preserve its autonomous nature, not around it through domestic law shortcuts.

The three decisions articulate a disciplined framework for gap-filling under the CISG. The first step is a gap-classification inquiry, requiring courts to determine whether an issue not expressly settled by the Convention falls within its scope or outside it. If the issue constitutes an internal gap, courts then must follow a hierarchical approach to resolving the gap, exhausting the Convention's own general principles before invoking domestic law under private international law. At the interpretive level, the Supreme Court imposes a similar discipline by explicitly mandating that the Convention's autonomous "reasonable person of the same kind in the same circumstances" standard must be applied before resorting to domestic doctrines of good faith and contractual construction. Underlying these developments in gap-filling and interpretation, there is also the Supreme Court's earlier recognition of the *ex officio* duty to apply the Convention itself, ensuring that the analytical framework is triggered even when the parties fail to raise it.[82]

For a CISG community that has long worried about the "homeward trend" as a systemic threat to the Convention's uniformity objective, the Korean trajectory offers a model of institutional self-correction. The Korean Supreme Court's recent reasoning reflects an awareness that reaching the right outcome by the wrong route does not fully honor the Convention's demands for uniformity and autonomous interpretation. The framework that emerges from these decisions is internally coherent and consistent with the interpretive approach long advocated in CISG scholarship.[83] While these Supreme Court cases mark a significant inflection point in the Supreme Court's CISG jurisprudence, it is yet unclear how

82 Injection-Moulding Case, at 3-4 & 8 (stating that courts have an *ex officio* duty to investigate and apply the CISG even absent party argument); *see also* Texsus v. Hansung, at 2-3 (correcting the lower court's gap-filling methodology); Weihai Jinnuo Fashion v. J S Co., at 1-2 (applying the CISG with priority and undertaking gap classification).

83 *See*, *e.g.*, Nwafor et al., *supra* note 4; Zeller, *supra* note 4; Kim, *supra* note 12.

widely these frameworks will be adopted in future CISG cases across Korean courts. There also remains the 'outward step' to be taken: deeper engagement with the global *jurisconsultorium* that the Convention's uniformity mandate ultimately requires. Whether, and how quickly, Korean courts will take that step also remains to be seen.

Received: Mar. 10, 2026
Modified: April 25, 2026
Accepted: May 1, 2026