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CASE LAW ON UNCITRAL TEXTS (CLOUT)

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INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/Rev.1). CLOUT documents are available on the UNCITRAL website: (<http://www.uncitral.org/clout/showSearchDocument.do>).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL web-site by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

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CASES RELATING TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG)

Case 851: CISG 8; 74

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

23 April 1997

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1997 vol., Law Press, pp. 1733-1740

English translation: <<http://cisgw3.law.pace.edu/cases/970423c1.html>>

Abstract prepared by Wei Xia YANG

A Chinese seller and an Indonesian buyer signed a contract for the sale of hand-selected peanuts. The buyer asserted that as the seller did not perform its duty to deliver the goods, it suffered a foreseeable loss of profit and exempted custom duty. The seller defended that the buyer did not issue the Letter of Credit (hereinafter "L/C") in accordance with the contract and breached the contract first. As to the L/C's issuing date, the English description and the Chinese description were different. The wording was "the L/C shall arrive to the seller 15 days before the month of the loading time" in Chinese. The English description was "the L/C must reach the seller 15 days before the commencement of the shipping period", which means that the L/C had to arrive 15 days before the loading date.

The Arbitration Tribunal observed that the English description and the Chinese description have the same force. It was more reasonable, though, that the issuing date was the one expressed in the English version. According to the Tribunal the contract was a standard contract provided by the seller, which should be liable for the consistency of the English and Chinese version pursuant to article 8 CISG. The Tribunal further held that the seller did not deliver the goods during the shipping period, in accordance with the contract, as the letter of credit did not reach it in the stipulated period. In this respect the buyer breached the contract, since it did not issue the L/C as per the agreement with the seller. The Arbitration Tribunal finally noted that the buyer did not prove it actually suffered any loss from the seller's breach of contract. According to the Tribunal there was no evidence that the seller knew or should have known that the buyer would incur an exempted custom-duty loss when it signed the contract (article 74 CISG). Therefore, the Tribunal dismissed the buyer's claim for losses, but ordered the seller to compensate the buyer for the cost of issuing and confirming the L/C.

Case 852: CISG 38; 39; 40; 45; 46; 74; 75; 77; 78; 84

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission

11 April 1997

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1997 vol., Law Press, pp. 1676-1687

Published in English: <<http://cisgw3.law.pace.edu/cases/970411c1.html>>

Abstract prepared by Wei Xia YANG

A Chinese seller (respondent) and a Hong Kong buyer (claimant) concluded a contract to export silicon metal. Since the goods did not conform with the contract, the buyer resold them at a reduced price and claimed damages to the seller.

Ruling on the substantive issues, the Arbitration Tribunal noted that the buyer had requested a further inspection at the earliest possible time and had informed the seller of the unacceptable quality of the goods within reasonable time in accordance with articles 38 and 39 CISG. As to article 40 CISG, referred to by the buyer, the Tribunal held that the seller was deprived of the rights granted by the contract because of the modifications it had made in the documents and therefore could not take the buyer's violation of the limitation period as a defence.

The Tribunal stated that the buyer was entitled to a substitute delivery of goods as part of compensation. The Tribunal also found that the seller had not replied to the buyer within a reasonable time, and that the measures taken by the buyer to enter into an agreement with its own customer were reasonable measures to mitigate losses under articles 74 and 77 CISG. The Tribunal stated that the seller should be held responsible to indemnify the damage incurred by the buyer as a result of the seller's breach of contract, including interest, pursuant to articles 78 and 84 of the Convention.

Case 853: CISG 25; 53; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission

31 May 1996

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1996 vol., pp. 1300-1302

Published in English: <<http://cisgw3.law.pace.edu/cases/960531c1.html>>

Abstract prepared by Indira Satarkulova

The seller, a Chinese company (claimant) entered into a contract with the buyer, an American company (respondent), and with the merchant middleman, another American company, for sale of children's jackets. After the shipment of goods, the seller's bank refused to cash the letter of credit due to non-compliance. The seller demanded payment from the buyer several times, but the buyer did not acknowledge these requests.

The Tribunal held that the buyer's acceptance of the goods, which follows from the buyer's letter to the seller, and the buyer's further refusal to pay for the samples and the jackets duly delivered by the seller constituted a fundamental breach of the contract.

Therefore the Tribunal ruled that the buyer, pursuant to articles 53 and 78 CISG, was obligated to pay the contract price as requested by the seller, the price for the samples and freight, plus interest on the overdue payment, as well as the arbitration fees.

Case 854: CISG 1 (1) (a); 25; 49 (1) (a); 59; 75; 78; 80

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

15 February 1996

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1996 vol., pp. 921-927

Published in English: <<http://cisgw3.law.pace.edu/cases/960215c1.html>>

Abstract prepared by Lachmi Singh

An Austrian seller (claimant) and a Chinese buyer (respondent) entered into a contract for the sale of hot-rolled steel plates. Later the seller was refused payment for the goods due to inconsistencies between the letter of credit and the documents submitted by it. The buyer submitted a proposal to handle the goods, but the seller did not agree and sold the goods to another company. Then it filed an application for the price difference and loss of profit.

After considering the dispute at hand as to whether the inconsistencies between the required documents and the letter of credit constituted a fundamental breach of contract, the Tribunal held that since the bank's behaviour was beyond the scope of review, the Tribunal would not make any decision on whether the bank had the right to decline the payment due to the inconsistencies between the letter of credit and the documents.

The Tribunal held that even if the issuing bank had sufficient reasons to decline the payment against the letter of credit, this would not be a sufficient reason for the buyer to avoid the sale contract. Under article 49 (1) (a) CISG, the buyer would be entitled to declare the sale contract void only if the seller had committed a fundamental breach. Pursuant to article 25 CISG, a breach of contract by the seller would be fundamental only if it resulted in such a detriment to the buyer as to substantially deprive him of what it was entitled to expect under the contract. The Tribunal held that the inconsistencies on the documents submitted by the seller were too insubstantial to constitute a fundamental breach. Therefore, the buyer had no right to declare the contract void.

Since the cover transaction by the seller was a reasonable resale, the Tribunal condemned the buyer to compensate the seller for the price difference in accordance with article 75 CISG. In addition, the buyer was directed to pay interest (article 78 CISG), and condemned to pay other costs relating to the arbitration proceedings.

Case 855: CISG 35; 53; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

14 February 1996

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1996 vol., pp. 912-914

Published in English: <<http://cisgw3.law.pace.edu/cases/960214c1.html>>

Abstract prepared by Anna Lin

A Chinese seller (claimant) and an American buyer (respondent) negotiated a contract for the purchase of bicycles. Before concluding the contract, the buyer received and accepted the design and specifications of the bicycles sent by the seller. After the bicycles were delivered, the buyer found them not having pumps, which was customary in the U.S. The seller initially rejected the buyer's request for the pumps, but on the buyer's refusal to make the payment, the seller agreed to provide the pumps if the buyer paid half of the total amount. The buyer did not respond, nor did it respond to the seller's suggestion to return the goods. Eventually, the seller filed an application for arbitration.

The Tribunal, after considering the fact that the seller had fully performed its obligation to deliver the goods according to the contractual specifications, found the buyer to be in breach of contract for not making the payment, as per article 53 CISG. The buyer was thus sentenced to make the full payment of the contractual amount plus interest to be calculated from the day after the payment was due.

Case 856: CISG 74

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

12 February 1996

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1996 vol., pp. 896-899

Published in English: <<http://cisgw3.law.pace.edu/cases/960212c1.html>>

Abstract prepared by Anna Lin

A Chinese buyer and an American seller entered into a contract for the purchase of art paper. In pursuance of the contract, the buyer issued an irrevocable letter of credit, but the seller failed to deliver the goods.

The Arbitration Commission accepted the buyer's application for arbitration. The Arbitral Tribunal rendered its opinion and award based on documents submitted by the buyer, and the court session, ex parte.

The Tribunal considered the fact that the buyer had performed its obligations under the contract and that the non-delivery by the seller caused significant economic loss to the buyer. Since the contract did not stipulate compensation for non-delivery, the Tribunal applied article 74 CISG and concluded that the seller had violated the terms of the contract and was liable to compensate the loss, including the loss of profit.

Examining the various claims submitted by the buyer, the Tribunal rejected the claim for damages under the penalty clause for late delivery. The Tribunal also rejected the buyer's claim for cost associated with the issuance of the letter of credit, since the cost was a normal cost of conducting business.

The Tribunal, however, accepted the buyer's claim for loss on the down payment, considering that as a result of the seller's non-delivery, the buyer had to pay twice the down payment to its own customer. The Tribunal also granted the buyer's claim for loss of profit, i.e. the difference between the contract price and resale price. In

addition, the Tribunal condemned the seller to bear the costs related to the arbitration proceedings.

Case 857: CISG 6; 8; 25; 52 (1); 72 (1); 74; 75; 77; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

5 February 1996

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1996 vol., pp. 868-874

Published in English translation: <<http://cisgw3.law.pace.edu/cases/960205c2.html>>

Abstract prepared by MAA-Anna Lin

A mainland Chinese seller and a Hong Kong buyer entered into a contract for the purchase of antimony ingots. The contract stipulated the deadline of the loading and the issuance date for the letter of credit. The seller sent a fax to the buyer stating a date of shipment and asked the issuing of the letter of credit through a different payment bank than the one agreed to in the contract. A few days afterwards, the buyer faxed the seller to cancel the contract.

The seller nevertheless shipped some of the antimony ingots to the designated port on the contract. Negotiations between the two parties on reselling the goods ended with no results. The seller resold the goods at a lower price and filed the arbitration application, claiming loss in price difference.

The Arbitration Tribunal ruled that fulfilling the loading obligation ahead of time was not a breach of contract as the buyer had asked for the shipment to be arranged as soon as possible. With respect to the letter of credit, the tribunal argued that the seller had the right to ask for an amendment of the contract, and since the buyer had not accepted the change, they must revert back to the original contract which the buyer had failed to do. This was to be considered a fundamental breach of contract by the buyer. However, citing article 77 CISG, the Tribunal reasoned that the seller should take the main responsibility for the delay in disposing of the goods and in increasing the loss of profit. Therefore, the Tribunal condemned the buyer to compensate the seller only for the loss in the price difference and interest, as well as the various costs relating to the arbitration proceedings.

Case 858: CISG 9; 38; 74; 77

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC]

16 December 1991

Original in Chinese

Published in Chinese: Zhongguo Go ji Jingji Maoyi Zhongcai Caijueshu Xuanbian (1989-1995), Beijing 1997) No. 80 [477-489]

Published in English: <<http://cisgw3.law.pace.edu/cases/911216c1.html>>

Abstract prepared by Meihua Xu

A Chinese buyer (claimant) and a seller (respondent, believed to be from Germany) entered into a contract for the sale of cold-rolled steel plates. The buyer received the

goods delivered to the first destination port. It then trans-shipped them to the second destination. Following an inspection at the second destination, the buyer alleged that the packaging of the goods did not conform to the contract and that rust was present on the goods. The buyer asserted that the goods either became rusty before they passed the ship's rail or were improperly packaged, and filed the arbitration application.

The Arbitration Tribunal held that according to article 38 CISG, the buyer should have inspected the goods at the first destination port, the buyer's failure to do so, its delay in inspecting the goods and inability to preserve them properly during trans-shipment, led to increased damages for which the buyer should be liable. However, the seller was to be considered liable for improper packaging and some of the damages claimed by the buyer. The seller was accordingly sentenced to refund the buyer.
