United Nations A/CN.9/SER.C/ABSTRACTS/67

General Assembly

Distr.: General
22 August 2007

Original: English

United Nations Commission on International Trade Law

CASE LAW ON UNCITRAL TEXTS (CLOUT)

Contents

V.07-86225 (E) 300807 310807

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). Information about the features of that system and about 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).

Issues 37 and 38 of CLOUT introduced several new features. First, the table of contents on the first page lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted by the court or arbitral tribunal. Second, the Internet address (URL) of the full text of the decisions in their original language are 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 by the United Nations or by UNCITRAL of that website; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Third, abstracts on cases interpreting the UNCITRAL Model Arbitration Law now 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, and in the forthcoming UNCITRAL Digest on the UNCITRAL Model Law on International Commercial Arbitration. Finally, comprehensive indices are included at the end, to facilitate research by CLOUT citation, jurisdiction, article number, and (in the case of the Model Arbitration Law) keyword.

Abstracts have been prepared by National Correspondents designated by their Governments, or by individual contributors. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

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

Case 712: CISG 74; 75; 77; 78
People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission
6 March 1997
Published in Chinese: Selected Compilation of Awards of CIETAC (1995-2002), Law Press, pages 25-33
English translation: <http://cisgw3.law.pace.edu/cases/970306c1.html>
Abstract prepared by Wei Xia YANG

The case deals with the reasonable measures to mitigate damages, the calculation of damages following a substitute transaction after avoidance and the calculation of interest rate of loss.

An Italian buyer and a Chinese seller signed three sales confirmation letters for the purchase of men's shirts. After the goods were delivered, the buyer refused to accept the delivery and to pay the purchase price on the grounds of non-conformity of the goods and delayed delivery. After storing the goods at the port of destination for some time, the seller had to transport the goods back to China to reduce the loss and resell them at a discount price. The seller claimed for losses arising from the buyer's breach of contract with the assertions that the buyer carried out the inspection before the goods were loaded on ship and the original shipment date was postponed at the buyer's request because the buyer required modification of some provisions of the confirmation letters.

The Arbitration Tribunal held that the contract was governed by the CISG as both parties have their place of business in contracting states. As the buyer breached the contract due to non-payment, it was to be held responsible for the seller's losses under Article 74 CISG. These included the price difference, the storage expenditures and the freight. With reference to Article 75 and 77 CISG, the Arbitration Tribunal stated that the seller had the right to ship the goods back to China and resell the goods in order to mitigate damages. According to Article 78 CISG, the Arbitration Tribunal also upheld the seller's claims for interest.

Case 713: CISG 6; 25; 30; 45; 74; 76; 78
People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission
4 April 1997
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, pages 1636-1641
English translation: <http://cisgw3.law.pace.edu/cases/970404c1.html>
Abstract prepared by Wei Xia YANG

This case deals with the definition of fundamental breach of contract and the foreseeability of damages.

A Hong Kong buyer and a Chinese seller concluded a contract for the sale of black melon seeds. The buyer performed its contractual obligation to make a down payment, but the seller failed to deliver the goods even after the buyer postponed the delivery dates several times. The buyer claimed loss of foreseeable profit arising from the seller's fundamental breach of contract. The seller asserted that the alteration of the quality requirements in the contract between the buyer and its Philippine clients caused the delayed delivery and the difficulties to perform the contract.

As to the applicable law, the Arbitration Tribunal noticed that both parties have applied the CISG rules even if there was no specific mention in the contract.

Concerning the substantive issues, the Arbitration Tribunal held that the seller's failure to deliver the goods within the time prescribed in the contract constituted a fundamental breach under Articles 25 and 30 CISG. The seller could reasonably foresee the buyer's losses of profits as consequence of its non-performance of the contract. The Arbitration Tribunal further observed that the alternation of the quality requirements in the contract between the buyer and its Philippine clients had nothing to do with the seller. The buyer did not request the seller to change the quality requirements and accordingly the validity of the original contract and the seller's liability under the original contract was not affected. The Arbitration Tribunal held that the buyer had the right to indemnity of the foreseeable profits, based on Articles 74 and 78 CISG. Furthermore, pursuant to Article 45 CISG, the Arbitration Tribunal upheld the buyer's claim for interest on the down payment.

Case 714: CISG 60; 64; 74; 75; 77; 78
People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission
30 April 1997
Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zjong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1997 vol., Law Press, pp. 1803-1808
English translation: <http://cisgw3.law.pace.edu/cases/970430c1.html>
Abstract prepared by Wei Xia YANG

This case deals with the grounds for avoidance of contract and the entitlement to damages following a substitute transaction as a consequence of avoidance.

A Chinese seller and a Swiss buyer signed a sales confirmation for molybdenum alloy. Later on, the buyer alleged that the seller lacked the intent to perform the contract on time because of the tight timeframe for inspection, thus the buyer did not issue the L/C and refused to take remedial measures. The seller resold the goods and suffered a loss, it thus claimed for damages. The seller asserted that the buyer did not want to perform the contract because the international market price of the goods was declining and the buyer intentionally breached the contract.

The Arbitration Tribunal held the buyer in fundamental breach of contract for not accepting the delivery and stated it should bear the entire liability for breach, pursuant to Article 60 CISG. The Tribunal observed that the carrier provided evidence that the seller applied for loading the goods while the buyer had no evidence to show that the goods were not shipped on the due date. Therefore, the

buyer had no ground to avoid the contract under Article 64 CISG. The Tribunal stated that the buyer acted without intent to make payment as agreed in the contract, and that it should compensate the seller's losses arising from its breach of contract in accordance with Article 74 CISG. The Tribunal dismissed the buyer's allegation that the seller did not take reasonable measures to mitigate the damages within a reasonable time according to Article 77 CISG and upheld the seller's claim for the price difference; it also awarded the seller the interest on the price difference under Articles 75 and 78 CISG.

Case 715: CISG 7 (2); 12; 18 (3); 80; 96
People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC]
15 December 1997
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., pp. 2822-2834
English translation: <http://cisgw3.law.pace.edu/cases/971215c1.html>
Abstract prepared by Meihua Xu

This case deals with the acceptance of offer (Article 18 CISG), the effect of a reservation on the formal requirement of contracts (Article 96 CISG), and a party's loss of rights to rely on a failure of the other party which was caused by its own act (Article 80 CISG).

A Chinese buyer entered into a contract with a Korean seller in November 1995 for the purchase of hot rolled coils. The contract provided for payment by Letter of Credit [L/C], and shipment by 10 December 1995. After the buyer issued the L/C, the seller asked for postponement of the shipment to 23 December. At the beginning of December, the buyer agreed to modify the L/C, but only to postpone the shipment date to 20 December. The seller alleged that it loaded the goods on 20 December onto the ship "JEON FIN" (which was in fact the ship "JEON JIN"), but the buyer did not receive the shipping notice sent by the seller on 25 December with the ship's name of "JEON FIN", which never arrived at the destination port. The buyer, concerned by a potential fraud, refused to modify the L/C.

On 13 January, the ship "JEON JIN" carried the goods to the destination port and the representatives of the two parties were there to negotiate the acceptance of the goods. The buyer asked to lower the price of the goods, the seller refused. The negotiation between the two parties failed and the seller advised the JEON JIN to leave the destination port.

Since the buyer had already signed a contract with its domestic clients for the resale of the contract goods, it claimed the loss of profit and the loss of a penalty paid to its client.

The buyer asserted that the seller's request to amend the L/C and to change the shipment date to 23 December was not in conformity with the contract and should be regarded as a new offer. Since it had only agreed to extend the shipment date to 20 December, this was to be considered a rejection of the offer, and be regarded as a counter-offer. Consequently, the seller should have loaded the goods on

10 December as stipulated in the original contract since no new agreement was reached; otherwise, the seller would breach the contract.

The seller counter argued that the buyer had agreed to modify the L/C and to postpone the shipment date to 20 December, and that the buyer had fundamentally breached the contract by failing to modify the L/C and to accept the goods, with the result that the seller suffered loss of profit and loss of compensation paid to the carrier. In addition, the seller had already notified the buyer that the correct name of the vessel was "JEON JIN"; therefore, the buyer should have accepted the goods unconditionally instead of focusing on the typo of the vessel's name.

The parties had agreed to apply INCOTERMS (1990) to the contract and UCP 500 to the L/C. At the hearing, both parties agreed to refer to other international customs in the arbitration; therefore, the Arbitration Tribunal deemed that the applicable laws in the dispute also included the CISG, "of which China and Korea are Contracting States", and other international customs agreed by the parties.

The Arbitration Tribunal noted that the buyer had agreed to modify the L/C, therefore, even though the parties had failed to reach an agreement on the shipment date, the buyer should have amended the L/C. Its failure to do so constituted a breach of contract.

With regard to the seller's allegation that its loading activity prior to 20 December meant acceptance of the buyer's request, the Arbitration Tribunal held that pursuant to Article 18 (3) CISG loading the goods could have in fact meant acceptance. However, such an acceptance must satisfy two requirements: (1) a notification of acceptance must be sent to the buyer in writing since, when signing the CISG, China had made a reservation preserving its "in writing requirement" (Article 96 CISG); and (2) such a notification of acceptance should be sent within a reasonable time. The Arbitration Tribunal concluded that neither the shipping activity, nor the shipping notice sent five days after shipment constituted a valid acceptance.

The Arbitration Tribunal also noted that the ship's name on the documents including the certificate of origin was "JEON FIN", and that in order to negotiate the payment from the bank, the seller did not revise the B/L and other negotiable documents while knowing that the vessel's name was wrong, which constituted a contract violation. Furthermore, sending the shipping notice five days later than the loading date not only was a contract violation, but induced the buyer to doubt about the late shipment and to be concerned over the false origin of the goods.

For the acceptance of the delivery, the Arbitration Tribunal deemed that after the ship arrived, the shipping agent informed the buyer to take delivery of the goods by providing the original JEON JIN B/L or with a shipping guarantee of a bank. In this situation, if the buyer had considered the resale agreement it had entered into with another customer, the buyer should have asked the seller to instruct the shipping agency to consent to the buyer to take delivery on the original JEON FIN B/L. However, the buyer failed to do so, but informed the L/C issuing bank that it could not amend the L/C and requested the seller to lower the price. The Arbitration Tribunal ruled that these activities of the buyer resulted in non-performance of the contract, and it should be responsible for this.

On the other hand, the Arbitration Tribunal held that since the seller confirmed that the arriving vessel JEON JIN was the one it leased for carrying the goods under the

contract, it should have shown the relevant evidence, taken active measure, instructed the vessel to release the goods, and cast away the doubts of the buyer in order to perform the contract smoothly however, the seller failed to do so, and should be responsible accordingly.

On the basis of Article 80 CISG, the Arbitration Tribunal concluded that both parties breached the contract and both suffered losses. However, the losses could have been avoided if the parties had more closely cooperated. Therefore, the parties had to bear their own losses. The buyer's claim and the seller's counterclaim were dismissed.

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75; 80
People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC]
16 December 1997
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., pp. 2841-2850
English translation: <http://cisgw3.law.pace.edu/cases/971216c1.html>
Abstract prepared by Meihua Xu

This case deals with the anticipatory breach of contract (Article 71 CISG) and the avoidance of contract prior to date for performance (Article 72 CISG).

A Chinese buyer entered into a contract with a German seller for the purchase of 2,000 tons of hot-dipped galvanized steel coils with payment by Letter of Credit [L/C]. After conclusion of the contract, the buyer issued a L/C which contained many terms not complying with the contract. Later on, the buyer asked the seller to divide the contract into two parts, 1,000 tons under each contract, or divide the B/L into four parts, 500 tons under each, in order to avoid trouble applying to customs. While the parties were still negotiating, the buyer modified the L/C by adding new terms without the consent of the seller. Meanwhile, the seller also requested to revise the reference in the L/C that read "each package to weight 5~9MT" to read instead "each package to weight no more than 6MT". The buyer did not accept this request asserting that changing the weight of each package would affect the purpose of the goods. After giving notice to the buyer that if it did not revise the L/C within three days, the seller would assume that the buyer cancelled the contract, the seller resold the goods and applied for arbitration. The seller asked the Arbitration Tribunal to require the buyer to pay the loss due to the resale of goods and the interest.

The seller alleged that the weight of each package, which was only the way of packing the goods, had nothing to do with the quality and specification of the goods and would not affect their usage. Furthermore, it argued that the buyer's unilateral revision of the L/C, first, and refusal to revise the L/C afterwards constituted an anticipatory and fundamental breach of contract.

The buyer counter argued on the basis of Article 35 (1) CISG, which states that the seller has the obligation to deliver conforming goods, and that any failure to do so should be considered a fundamental breach of contract under Article 25 CISG. In addition, according to Articles 71 and Article 72 (1) CISG, the buyer alleged that the

seller had admitted that the goods to be delivered did not comply with the contract even before the buyer revised the contract, which fell within the above articles. According to Article 72 (2) and Article 72 (3) CISG, the buyer had the right to avoid the contract due to the seller's anticipatory breach of contract.

Since the parties' places of business, Germany and China, are Contracting States of the CISG, and the CISG was often referred to in the seller's application and the buyer's defence, the Arbitration Tribunal ruled that the CISG was the applicable law.

The Arbitration Tribunal noted that the buyer had failed to issue the L/C in accordance with the contract, therefore, as per the seller's request, the buyer had an obligation to make amendments. On the contrary, revising the L/C without the consent of the seller clearly violated the contract. Therefore, the Arbitration Tribunal dismissed the buyer's assertion that the seller had committed an anticipatory breach of contract.

With regard to the seller's request to revise each package weight, in accordance with Article 29 (2) CISG, the Arbitration Tribunal held that there was no written evidence proving that the parties had reached an agreement on this. Therefore, the original clause, package weight of "5~10MT", was binding on both parties. The buyer had the right to refuse to revise this clause and the seller breached the contract by seeking to require the buyer to revise this clause; therefore, it shall bear liability.

Holding both parties at fault, the Arbitration Tribunal compromised and only granted part of the loss of price difference claimed by the seller without interest.

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78

People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC]
6 January 1999
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) 1999 vol., p. 1417-1424
English translation: <http://cisgw3.law.pace.edu/cases/990106c1.html>
Abstract prepared by Xiaotong Yuan

The case deals with fundamental breach of contract, the calculation and mitigation of damages.

An Australian company (the seller) entered into a contract with a Chinese company (the buyer) for the sale of raw wool in May 1998. The contract mentioned a payment by letter of credit by a specified date. The seller prepared the goods for delivery and notified the buyer. However, the buyer did not issue a L/C even after the seller sent a notice to urge the buyer and declared that the wool would be resold. The seller resold the goods and commenced arbitration proceedings to claim compensation for the price difference loss and additional expenses.

Since the parties had not specified the governing law of the contract, the Arbitration Tribunal held that the CISG should apply since both China and Australia are contracting states. In addition, the Arbitration Tribunal decided that the terms of the China Textile General Trading Terms and Conditions for Purchase of Wool & Wool

Bar (hereinafter the "General Terms"), which were incorporated into the contract by the parties, were a legitimate part of the contract and binding on the parties.

One major issue of the dispute was whether the buyer should issue the L/C and what the conditions for the issuance should be. The Arbitration Tribunal decided that the buyer had the obligation to issue the L/C subject to the contract and this obligation did not rely on the seller's performance as a condition. Unless the buyer could prove the seller might fail to deliver the goods, the buyer was not exempt from the obligation to issue the L/C. The Arbitration Tribunal noted that the shipment period was specified in the contract to be June 1997, and that the buyer was obligated to issue the L/C no later than 31 May 1997. The Tribunal confirmed that the buyer had committed a fundamental breach of contract according to Article 64 CISG and that the seller had the right to claim damages pursuant to Articles 61 and 75 CISG.

The seller claimed compensation for the price difference loss, interest loss, the additional storage expenses and the expected profits. The Arbitration Tribunal confirmed the price difference loss which was calculated comparing the contract price and the actual price for the resold goods. The Tribunal noted that the seller had declared that the buyer had violated the contract and that it would resell the goods. This was considered as a declaration of avoidance by the seller pursuant to Article 64 CISG. In such a case, the seller should take all reasonable measures to mitigate the loss in accordance with Article 77 CISG. The Tribunal decided that, for the part of loss incurred after the declaration of avoidance, the seller had no right to claim damages – due to the seller's failure to mitigate the loss. Therefore, the compensation for the interest loss and storage expenses should be only calculated till the day on which the contract was declared void and the goods were resold. For the seller's claim for the loss due to termination of a forward foreign exchange contract, the Arbitration Tribunal noted that the loss was caused in connection with a new contract which was signed for the purpose of the expected profits from the wool sales contract. The Tribunal held that such a loss had exceeded what the buyer foresaw or ought to have foreseen at the time of the conclusion of the contract. In accordance with Article 74 CISG, the seller had no right to claim the damages for this loss.

Case 718: CISG 7 (2); 8 (3); 9; 53; 78

People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC]
13 January 1999
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) 1999 vol., pp. 1443-1448
English translation: <http://cisgw3.law.pace.edu/cases/990113c1.html>
Abstract prepared by Meihua Xu

This case deals with the buyer's obligations to pay the price of the goods (Article 53 CISG) and the interest on the price in arrears (Article 78 CISG); and with the general rules for interpreting a party's statements or other conduct in light of the relevant circumstances (Article 8 (3) CISG).

Two American Companies, "A Company" and "B Company", (the buyer) entered into two contracts with a Chinese company (the seller) for the purchase of latex

gloves, providing for payment by telex transfer and shipment in four installments. The heading of the two contracts indicated that the buyer was “A Company”, the contracts were signed and sealed by a Ms. T., representative of both American companies, and “B Company”.

After concluding the contract, the seller delivered the goods and issued invoices, however, the buyer only paid part of the price due, even after being urged by the seller. This caused severe economic loss to the seller, which filed an application for arbitration against both A Company and B Company.

The seller argued that in all of the correspondence between the parties, Ms. T., the representative of A Company, had never mentioned B Company, and that according to the trade practices between the two parties, the seller embedded “A Company” as buyer in the two contracts. A Company signed the contract with B Company’s name without making any alteration or explanation on the fact that A Company was the buyer, therefore, A Company should be regarded as the party to the contracts. Pursuant to Article 53 CISG, the buyer should pay the price of the goods since the ownership of the goods had been transferred to the buyer.

A Company counter argued that the contracts were entered into by Ms. T. on behalf of B Company, which made the payment for the goods, freight, and tariff and, therefore, should be considered the party to the contracts. The seller made a mistake in subscribing A Company as the consignee and issuing the invoice to A Company.

Since the buyer and the seller had not stipulated the applicable law in the contracts, the Arbitration Tribunal held that the CISG should apply to the dispute because the places of business of the seller and the buyer, China and the United States, were Contracting States of the Convention.

The Arbitration Tribunal noted that the representative of both A Company and B Company, Ms. T., would have been able to “alter the reference at the title position” from A Company to B Company if she had deemed that B Company was the buyer. From the performance of the contracts, the consignee of the goods delivered by the seller was A Company, which received the goods and cleared the goods from customs. The seller invoiced A Company for the goods, and A Company never denied that it was the buyer of the goods until the arbitration proceedings. Therefore, the Arbitration Tribunal could not accept A Company’s allegation that B Company had paid a sum to the seller and for this B Company should be regarded as the buyer. Such an allegation would violate the bona fide principle. It is common in fact that a buyer authorizes another party to pay for the goods.

In accordance with Articles 53 CISG and 78 CISG, the Arbitration Tribunal concluded that since the buyer, A Company, had accepted the goods, it should have paid the price for the goods and the fact that the buyer’s refusal to pay the price constituted a contract violation. Therefore, the seller was entitled to the price for the goods and the interest on it.

Case 719: CISG 2 (e)
United States: U.S. Bankruptcy Court, Middle District of Georgia, Nos. 00-11881, 01-1003
25 July 2002
In re Ayers Aviation Holdings, Inc. (First National Bank of South Georgia v. Ayers Aviation Holdings, Inc.)
Published in English: Bankruptcy Reporter 282, 534; 2002 Bankr. LEXIS 1151, 2002 Westlaw 1835423
Abstract prepared by Peter Winship, national correspondent

The case deals with conflict of laws issues and the CISG's application.

A bankruptcy proceeding was commenced against a corporation with its place of business in the United States. The debtor claimed that it was the buyer of an airplane and two airplane engines from an enterprise with its place of business in the Czech Republic. The alleged seller disputed the effectiveness of the sale and several other persons claimed property rights in the airplane and the engines. One claimant noted that while the Czech Republic was a party to the Sales Convention, aircraft were excluded from its coverage according to CISG article 2 (e). Without reference to the airplane engines, the court concluded that Czech domestic law governed the claims to the property in dispute.

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85
The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI)
Case No. 2319
15 October 2002
Published in English in: *Tijdschrift voor Arbitrage*, 2003, 22.
http://cisgw3.law.pace.edu/cases/021015n1.html
Abstract prepared by Nathalie M.N. Voogd

The core part of the case concerns the interpretation of whether the goods conformed to the contract as being fit for the purposes for which goods of the same description would ordinarily be used. The Arbitral Tribunal also discussed the notice of non-conformity and its addressee and the possibility of refusal and suspension of delivery.

The claimants in this case, several Dutch companies, hereafter referred to as 'the sellers', were active in the exploration of offshore gas fields in The Netherlands' continental shelf. The buyer, an English company, was a major international player in the field of exploration, production and refining of crude oil and distribution of oil products and gas. In 1993 and 1994, the parties concluded twelve contracts concerning condensate, a crude oil mix referred to as 'Rijn Blend'. On June 11, 1998, the buyer informed the sellers that it would not accept the next delivery of Rijn Blend, because, due to high levels of mercury therein, further processing or sales were impossible. On June 16, 1998, the buyer notified the sellers that it would suspend taking delivery until a solution for the mercury problems was found. No solution was found however; therefore, the buyer let some contracts expire and terminated the other contracts. In the meanwhile, the sellers sold the Rijn Blend that was not taken by the buyer to third parties at an alleged loss compared to the contact price.

In May 2000, the sellers initiated arbitration proceedings against the buyer at the NAI (Netherlands Arbitration Institute). The sellers argued that the Rijn Blend, even with increased levels of mercury, was in conformity with the contract since no specific quality requirements were agreed upon. Thus the buyer breached the contract in not taking delivery and suspending its contractual obligations. The sellers claimed damages. The buyer on the other hand declined any liability and stated that the goods were not in conformity with the contract because the sellers knew or should have known that, since Rijn Blend is used in the refinery business, Rijn Blend with such high levels of mercury might cause damages downstream. Because of this non-conformity, the buyer maintained that it was entitled to refuse delivery and suspend its obligations under the contracts.

Because the contract contained no quality specifications, the Arbitral Tribunal found that the issue of conformity should be decided based on Article 35 (2)(a) CISG, which requires that the goods are fit for the purposes for which goods of the same description would ordinarily be used. The Arbitral Tribunal explained that three possible interpretations in this respect exist. The first interpretation requires the goods to be of a merchantable quality. In this view, which is favoured in English common law legal systems, goods are in conformity with the contract if a reasonable buyer would have concluded contracts for the goods at similar prices if the buyer had known the quality of the goods. A second line of thought, derived from civil law, calls for goods of average quality. A third interpretation rejects the merchantable and average quality standard, stating those do not fit in the CISG system, and suggests a reasonable quality criterion.

Interpretations based on the merchantable and average quality norms led to different conclusions in this case. Therefore, the Arbitral Tribunal decided that Article 35 (2)(a) CISG should be interpreted according to the reasonable quality criterion. The Arbitral Tribunal found that that the reasonable quality test met the terms of Article 7 (1) CISG since it did not rely immediately on domestic notions. It also was consistent with Article 7 (2) CISG, allowing general principles of CISG as gap fillers. The reasonable quality standard furthermore was compatible with the preparatory works of CISG. Moreover, if Dutch law would be applied in this case, the reasonable quality interpretation would prevail.

The Arbitral Tribunal decided that the Rijn Blend did not meet the reasonable quality norm, because the price the parties agreed upon would not be paid for condensate with increased levels of mercury. Also, no quality issues occurred in the first years after the contracts were closed and buyer could therefore expect a constant quality level of Rijn Blend. Thus the Arbitral Tribunal found that the buyer was entitled to suspend future deliveries according to Article 73 (1) CISG, since the contracts were instalment contracts.

However, the Arbitral Tribunal held that the buyer, concerning the June instalment, had not complied with Article 71 (3) CISG, which requires an immediate notification of the suspension of delivery. The buyer had spoken to a third party about its intentions to suspend delivery, but this third party had solely been given authority in certain commercial matters. The third party could not be considered an express nor implied agent of the sellers and therefore discussing the issue with this third party did not constitute a notice as required by Article 71 (3) CISG. Consequently, the Arbitral Tribunal confirmed the annulment of the contract with

regard to future deliveries, but awarded damages the sellers had sustained with respect to the June instalment.

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United Nations Sales Convention (CISG)

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CISG 6

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 7

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

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Case 715: CISG 7 (2); 12; 18 (3); 80; 96 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (15 December 1997)*

Case 718: CISG 7 (2); 8 (3); 9; 53; 78 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (13 January 1999)*

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Case 718: CISG 7 (2); 8 (3); 9; 53; 78 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (13 January 1999)*

CISG 9

Case 718: CISG 7 (2); 8 (3); 9; 53; 78 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (13 January 1999)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 12

Case 715: CISG 7 (2); 12; 18 (3); 80; 96 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (15 December 1997)*

CISG 18 (3)

Case 715: CISG 7 (2); 12; 18 (3); 80; 96 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (15 December 1997)*

CISG 25

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 26

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 29

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

CISG 30

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

CISG 35

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

CISG 35 (2)

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 39 (1)

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 40

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 45

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

CISG 46

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 50

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 53

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

Case 718: CISG 7 (2); 8 (3); 9; 53; 78 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (13 January 1999)*

CISG 54

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 60

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 61

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 64

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

CISG 71

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 72

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

CISG 73

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 74

Case 712: CISG 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (6 March 1997)*

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

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CISG 75

Case 712: CISG 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (6 March 1997)*

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 76

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

CISG 77

Case 712: CISG 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (6 March 1997)*

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 78

Case 712: CISG 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (6 March 1997)*

Case 713: CISG 6; 25; 30; 45; 74; 76; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (4 April 1997)*

Case 714: CISG 60; 64; 74; 75; 77; 78 - *People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission (30 April 1997)*

Case 717: CISG 25; 26; 53; 54; 60; 61; 64; 74; 75; 77; 78 - *People's Republic of China: PRC: China International Trade and Economic Arbitration Commission [CIETAC] (6 January 1999)*

Case 718: CISG 7 (2); 8 (3); 9; 53; 78 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (13 January 1999)*

Case 720: CISG 6;7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 80

Case 715: CISG 7 (2); 12; 18 (3); 80; 96 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (15 December 1997)*

Case 716: CISG 25; 29; 35; 53; 60; 71; 72; 75 ; 80 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (16 December 1997)*

CISG 85

Case 720: CISG 6; 7; 8; 9; 35 (2); 39 (1); 40; 46; 50; 71; 73; 74; 75; 77; 78; 85 - *The Netherlands: Nederlands Arbitrage Instituut/Netherlands Arbitration Institute (NAI) - Case No. 2319 - (15 October 2002)*

CISG 96

Case 715: CISG 7 (2); 12; 18 (3); 80; 96 - *People's Republic of China: PRC: China International Economic & Trade Arbitration Commission [CIETAC] (15 December 1997)*