



General Assembly

Distr.
GENERAL

A/CN.9/SER.C/ABSTRACTS/17
11 May 1998

ENGLISH
ORIGINAL: SPANISH

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW

CASE LAW ON UNCITRAL TEXTS (CLOUT)

Contents

	<i>Page</i>
I. Cases relating to the United Nations Sales Convention (CISG)	2
II. Additional information	2

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). CLOUT documents are available on the website of the UNCITRAL secretariat on the Internet (<http://www.un.or.at/uncitral>).

Unless otherwise indicated, the abstracts have been prepared by National Correspondents designated by their Governments. 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.

Copyright © United Nations 1998

Printed in Austria

All rights reserved. Applications for the right to reproduce this work or parts thereof are welcome and should be sent to the Secretary, United Nations Publications Board, United Nations Headquarters, New York, N.Y. 10017, United States of America. Governments and governmental institutions may reproduce this work or parts thereof without permission, but are requested to inform the United Nations of such reproduction.

I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 210: CISG 33(c); 39(1); 74

Spain: Audiencia Provincial, Barcelona

20 June 1997

Original in Spanish

Published in Spanish: [1997] 4 Revista Jurídica de Catalunya 110

The dispute concerns a possible lack of conformity of textile dyes supplied late by the foreign seller to the Spanish buyer. The buyer's judicial claim for damages was not admitted by the Court.

Three main points of the judgment are of interpretative interest.

In the first place, the Court held that the seller had fulfilled its delivery obligation within a reasonable time after the conclusion of the contract (article 33(c) CISG), since the buyer had accepted the goods without protest at the time of their delivery and no specific delivery date had been expressly agreed in the contract. The Court did not accept that the reasonableness implied in accepting delivery without protest could be affected by the seasonal nature of the goods, whose commercial use was to some extent connected with the Christmas period.

Secondly, the Court expressed its opinion regarding the reasonable time within which the buyer must give notice to the seller of non-conformity of the goods following their receipt and after having discovered such non-conformity, in accordance with article 39(1) CISG. It maintained that it was unreasonable for the buyer to receive protests and complaints regarding defective quality from third parties to whom the buyer had resold the goods in a transformed condition and yet to say nothing at all to the supplier of those defective retailed goods. It is unacceptable to refrain from giving notice of non-conformity until payment is sought by the seller from the buyer, but it is reasonable for the buyer to give such notice to the seller as soon as the buyer becomes aware of the non-conformity from the protests by third parties.

The Court also expressly indicated in this matter that, within the scope of the CISG, no provisions specifically regulate hidden defects but, in their place, there are provisions governing non-conformity of goods forming the subject of the contract.

Finally, the Court laid down a set of appropriate criteria for fixing damages, as provided for in article 74 CISG.

II. ADDITIONAL INFORMATION

Corrigenda

Document A/CN.9/SER.C/ABSTRACTS/14 (French text only)

In the case caption to case 197, the entry relating to the date *should read* "20 December 1994" *instead of* "20 December 1997".

Document A/CN.9/SER.C/ABSTRACTS/16 (English and Russian texts only)

In the case caption to case 207, the case number entry *should read* "208" *instead of* "207"; and

In the case caption to case 208, the case number entry *should read* "209" *instead of* "208".
