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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 (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 website 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 1097: CISG 1; 30; 35 (2); 39; 45; 74

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

Shenzhen Commission (now South China Branch)

CISG/2003/01

3 June 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030603c1.html>

Abstract prepared by Haozhen Duan

An Australian buyer and a Chinese seller signed a contract for the purchase of garments. The buyer paid the amount due for the goods and shipping, but the seller delayed the delivery of the goods and the quality of the garments was very poor, which caused the buyer's clients to return them and refuse payment. The buyer had numerous fruitless discussions with the seller, and then initiated arbitration proceedings and asked the Arbitration Tribunal to order the seller to refund the money for the goods, shipping costs and loss of interest.

The parties had not established in the contract a law to govern it. In view of the fact that the place of business of the parties was in two States Parties to the CISG, the Tribunal ruled under Article 1 of the Convention that the dispute should be governed by the Convention.

The Tribunal held that the seller had violated the provisions of the contract, that the goods delivered had serious quality problems and that they were not fit for commercial sale (Article 35 (2) CISG), which had prevented the buyer from selling the goods to its clients. Under Article 45 CISG, the seller should assume responsibility for breach of contract. The Tribunal also noted that the buyer had informed the seller of the quality problems within a reasonable time limit, and therefore, had not lost its right to claim damages (Article 39 CISG).

The Tribunal, however, held that the amount of compensation demanded by the buyer for the loss of profit needed to be adjusted, as it was too high and violated the provisions of Article 74 of the Convention. The Tribunal ruled that the seller should refund the money for the goods and shipping costs to the buyer and compensate it for a certain loss of profit. The Tribunal finally held that the return of the goods did not have any practical significance, and if the seller requested such return it should bear the relevant costs.

Case 1098: CISG [1]; 53; 59; 62; 74; 78

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

CISG/2003/16

17 February 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030217c1.html>

Abstract prepared by He Liu

A Chinese seller and a Belgian buyer signed a contract for the sale of tyres. After the goods arrived at the destination, the seller received only a portion of the money by the agreed date of payment. Later, the buyer submitted a schedule of payments for the money owed, but failed to comply with it. Following a request from the seller, the buyer paid for another portion of the goods, after that it stopped paying. The seller applied for arbitration, and requested the Arbitration Tribunal to order the buyer to pay the rest of the sum, with interest, and to cover the costs of arbitration and other related costs.

The parties had not chosen in the contract a law to govern disputes. Since the place of business of both parties was in States Parties to the CISG, the Tribunal decided that the Convention would be the applicable law.

The Tribunal found that the contract was valid, and the seller had delivered the goods as agreed. However, despite making part of the payment, the buyer had failed to pay the full amount according to the contract and the subsequent promise to make payment. In accordance with Articles 53 and 59 of the Convention, the Tribunal found that this behaviour constituted a breach of contract. The Tribunal went on to support the request of the seller according to Articles 62, 74 and 78 CISG.

Case 1099: CISG [1(1)(a)]; 74; 78

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

CISG/2002/12

26 July 2002

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/020726c1.html>

Abstract prepared by Shiquan Zhao

A German buyer and a Chinese seller signed a contract for the sale of mung beans. It was agreed that the method of payment would be by letter of credit (L/C). Following the delivery of the goods and the payment, the buyer discovered that the quality of the goods did not comply with the provisions of the contract, and asked to return the goods. The seller agreed to take them back, and proposed to pay to the buyer 50 per cent of the money received, after the goods were shipped back to a Chinese port. The balance and the other costs confirmed by both parties would be repaid in tranches by deducting them from the trade conducted between the parties within a certain subsequent period. The parties signed a supplementary agreement on the amount of financial compensation the seller was to make as a result of its breach of contract. The buyer agreed that the seller would supply pineapples and new mung beans to offset the compensation. If full compensation was not made within a certain period of time, the seller would pay in cash within another agreed period of time. Later the buyer claimed that the seller had not delivered new goods as agreed nor repaid in cash the money owed, and initiated arbitration proceedings, demanding that the seller should pay the outstanding amount with interest, and the legal and arbitration fees.

The contract did not establish a law to govern it. Since the place of business of the parties concerned was in Germany and China respectively, and the two countries are both States Parties to CISG, the Arbitration Tribunal ruled that the Convention would govern the settlement of the dispute. As for those matters for which the

Convention did not provide regulation, the law of China would be applicable according to the principle of the closest connection.

The Tribunal ruled that the seller had failed to pay the money to the buyer within the period of time stipulated in the supplementary agreement, and its behaviour was a breach of contract, for which it must accept responsibility. In accordance with Article 74 CISG, the Tribunal supported the buyer's request for the seller to pay the rest of the money. In addition, under Article 78 CISG, the Tribunal supported the request of the buyer for the seller to pay the interest on the rest of the money. The Arbitration Tribunal noted that the interest claimed by the buyer was too high and ruled that it should be calculated according to the relevant Chinese regulations on the interest on delayed payments.

Case 1100: CISG [1(1)(a)]; 38; 39; 74

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

Shenzhen Commission (now South China Branch),

CISG/2002/04

23 July 2002

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/020723c1.html>

Abstract prepared by Shiquan Zhao

An Australian buyer and a Chinese seller signed a contract for the sale of DVD players. Afterwards, the buyer applied for a letter of credit according to the contract, and the seller sent samples by post to the buyer. Upon examination, the functioning of the sample players was found to comply with the contract provisions. After the goods reached the destination port, the buyer, however, discovered through examination that not all the DVD players had YUV output. Furthermore, the DVD players were poor in quality, and four of them broke down during the testing. After repeated discussions, the parties reached an agreement to reduce the price because of the issue of YUV output. However, 165 defective DVD players were returned several months after the DVD players went on sale, although the dispute had already been settled through an earlier arbitration. Later, the buyer's customers returned another 69 defective machines. The quality problems occurred within the one-year warranty period, and the rate of breakdown was 39 per cent. The buyer initiated another arbitration proceeding, and requested that the seller be ordered to refund the money for the defective machines with interest, and to pay for all the damages caused by the return of the machines and other costs.

The contract did not include any clause on the choice of law. Since the place of business of both parties was in States Parties to the CISG, the Arbitration Tribunal found that the dispute was to be governed by the Convention.

Regarding the request of the buyer to return the goods, the Tribunal held that there was no limit on the number of times the goods could be returned as long as the buyer exercised its right to return them within the warranty period. The Tribunal found that the buyer had examined the goods immediately after they had reached the destination port, and had disputed the quantity and quality at the time (Articles 38 and 39 CISG). In addition, the seller had not disputed the demand of the buyer to return the goods. The Tribunal upheld the request to return the goods and further ruled that the costs for returning should be covered by the seller. The Tribunal also

ruled that the seller must refund the money for the 69 defective DVD players, with interest. The Tribunal finally held, under Article 74 of the Convention, that the seller should compensate the buyer for all the damages including the costs for testing the defective machines and the anticipated profits.

Case 1101: CISG [1(1)(a)]; 25; 75; 77; 79

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

CISG/2002/17

4 February 2002

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/020204c2.html>

Abstract prepared by Yun Wang

A buyer from China and a seller from Singapore entered into a contract for the purchase of screw-thread steel. According to the contract, the bulk of the payment for the goods would be made with a letter of credit (L/C) and a small portion of the money would be paid by direct transfer into an account designated by the seller. The seller would start loading the ship once the buyer had transferred the money. Following the signing of the contract, a L/C was timely issued, but the money transfer by the buyer to the seller was, for various reasons, delayed. At the same time, the seller made repeated requests to amend the L/C to extend the time for the loading of the ship and the term of validity of the L/C itself. On two occasions the buyer agreed to amend the L/C, but on the third occasion the buyer wanted to delay the shipping until further notice. Afterwards, the buyer requested replacement of the screw-thread steel with wire rod, and refused to take delivery of the goods on the pretext that no import licence was obtained. The seller had to resell the goods to another buyer. The buyer claimed that the seller had been slow in booking a ship to deliver the goods, while the seller claimed that the buyer was slow in making payments and in receiving the goods. A dispute then arose between the parties and the buyer initiated arbitration proceedings, requesting the Arbitration Tribunal to order the seller to refund part of the money paid by the buyer, with interest. The seller made a counter request for an order for the buyer to pay the difference between the contracted price and that in the resale contract, with interest.

The parties' places of business were in two States Parties to the CISG. The seller made clear in its statement that the Convention was applicable; the buyer did not make any explicit objection, and invoked the Convention in its statement. The Tribunal held therefore that the dispute should be governed by the Convention.

The Tribunal held that the buyer should not have delayed the bank transfer, and the seller for this reason had the right to delay the delivery. The Tribunal further found that the time taken by the seller to book a ship was reasonable, and that the delay had been caused by the buyer. The Tribunal found that the buyer's request for the replacement of screw-thread steel by wire rod constituted using an inappropriate reason to unilaterally cancel the contract. As for the buyer's inability to obtain an import licence; according to the Tribunal, the buyer had failed to notify the seller in a timely manner, and therefore it did not have the right to use the clause of force majeure in the contract to make counter arguments to excuse its slowness in taking delivery of the goods (Article 79 CISG). On the contrary, the fact that the buyer had used this inappropriate reason to unilaterally cancel the contract was a fundamental

breach of contract (Article 25 CISG). The buyer's behaviour was the reason for the seller's failure to deliver the goods. In view of this, the Tribunal rejected all the requests made by the buyer, and ruled that the buyer should compensate the seller for damages caused by the difference in the price of the goods resold (Article 75 CISG). However, the Tribunal found that the seller had not resold the goods within a reasonable time, and therefore did not support its request for the payment of interest on the damages due to the difference in price.

Case 1102: CISG [1(1)(a)]; 36 (2); 38, 39

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

Shenzhen Commission (now South China Branch)

CISG/2001/04

25 December 2001

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/011225cl.html>

Abstract prepared by Ting Zhou

A Chinese seller and an Australian buyer entered into a contract of sales of DVD players. Upon the arrival of the goods, the buyer inspected them and found that they did not comply with the provisions of the contract in terms of either quantity or quality. In view of these problems, the two parties reached an agreement to reduce the price, and agreed that the seller would make appropriate deductions when negotiating the payment. However, the seller did not implement the agreement for price reduction and continued to negotiate the full amount for all the goods according to the original price. In addition, the two parties failed to reach any result about returns and compensation. The buyer applied for arbitration, and requested the Arbitration Tribunal to rule that: (1) the seller should refund the overpayment for the goods; and (2) the goods should be returned and the seller should refund the rest of the money for the goods and make compensation for the damages.

The two parties had not chosen a law to govern disputes over the contract. The Tribunal held that, since the places of business of the two parties were in States Parties to CISG, the Convention should be applied.

The Tribunal determined that the problems discovered by the buyer after inspecting the goods were real and granted recognition to the agreement between the parties for price reduction. The Tribunal ruled that the seller ought to refund to the buyer the sum of money overpaid for the goods, and to pay interest on that money (Article 78 CISG).

Concerning the issue of returning the goods, the Tribunal held that the buyer had examined the goods immediately after they had arrived in Australia, and had given notice of issues with the quality and quantity (Article 38 CISG). The buyer hence had the right to claim compensation from the seller according to Article 36 (2) and Article 39 of the Convention. The Tribunal finally ruled that the seller ought to refund the buyer for the over payment of the goods and the relevant damages, as well as pay interests.

Case 1103: CISG [1(1)(a)]; 74

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

Shenzhen Commission (now South China Branch)

CISG/2000/14

7 December 2000

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/001207cl.html>

Abstract prepared by Ting Zhou

A Chinese buyer signed a contract with a French seller for the purchase of fine white cane sugar. Afterwards, the buyer signed a resale contract for the same goods with a client in China. After the date of delivery expired and despite repeated requests from the buyer, the seller refused to make the delivery, which prevented the buyer from honouring the contract for the resale. The buyer therefore initiated arbitration proceedings and requested the Arbitration Tribunal to order the seller to pay the costs, including the loss of profit from the premium in the resale contract caused by the breach of contract by the seller, the cash deposit for the performance bond for the contract, the penalty for breaching the contract and the compensation that the buyer must pay to its client for breaching the contract for resale.

The parties had not chosen a law to govern disputes. The Tribunal held that the CISG would be applicable, since the place of business of both parties was in States Parties to the Convention, and the parties did not rule out in the contract the applicability of the Convention.

The Tribunal held that the seller's failure to deliver the goods was a clear breach of contract. In accordance with Article 74 of the Convention, the Tribunal ruled that the seller should compensate the buyer, with interest, for the damages suffered, but the seller would only be responsible for the losses it had been aware of or ought to have been aware of at the time when the contract was signed. The Tribunal supported the claim made by the buyer for the loss of profit from the premium in the resale contract.

Concerning the cash deposit for the performance bond, the Tribunal held that there was no ground for the buyer to demand that the seller should pay the performance bond, and therefore it did not support the claim.

Case 1104: CISG 53; 61, 62, 67, 74; 78

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

Shenzhen Commission (now South China Branch)

CISG/2000/13

6 December 2000

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/001206cl.html>

Abstract prepared by Ge Zhang

A seller from Hong Kong and a buyer from the United States of America entered into contracts of sales of Guaiacol glyceryl ether. Following delivery of the goods by the seller, the two parties negotiated and reached an agreement to postpone payment. The buyer subsequently refused to make the payment under one of the

contracts. As a result, the seller applied for arbitration, requesting the Arbitration Tribunal to order the buyer to pay for the goods, with interest, for the costs incurred during the period between the arrival of the goods at their port of destination and the payment of the money, and other costs.

The parties had not specified what law should govern the contract. However, both parties made their statements on the basis of the Law of Contract of the People's Republic of China and CISG, and further agreed unequivocally that the case would be governed by the law of Mainland China and CISG. The Tribunal respected the intention of the parties and decided that the laws governing the contract would be that of Mainland China and CISG.

The Tribunal held that the seller had provided sufficient evidence to prove that it had delivered the goods as agreed in the contract, yet the buyer had not made the payment provided for in the contract, and neither had the buyer provided any effective evidence to prove that it had paid the price for the goods under the contract. Hence the Tribunal held that the buyer had violated its obligation to take delivery of the goods and pay their price and ought to accept responsibility for breaching the contract. In accordance with Articles 61, 62, 74 and 78 of the Convention, the Tribunal ruled that the buyer must pay to the seller the sum for the goods under dispute and the relevant costs caused by its breach of contract, and interest.

On the other hand, the buyer claimed after the hearing by the Tribunal that the goods delivered by the seller had quality problems. The Tribunal held that the buyer had not made any counterclaim within the time limit provided by the rules of procedure for arbitration, and it had made clear during the hearing that it would not raise any objection against the quality of the goods. The Tribunal therefore decided that it would not consider the claim made by the buyer regarding the quality of the goods.

Case 1105: CISG [1(1) (a)]; 7 (1); 38; 53; 62; 78

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

Shenzhen Commission (now South China Branch)

CISG/2000/12

6 November 2000

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/001106cl.html>

Abstract prepared by Weidi Long

A Chinese buyer and a Singaporean seller entered into a contract of sales of marble stone. The buyer delayed part of the payment to the seller after receiving the goods. Following fruitless discussions with the buyer, the seller initiated arbitration proceedings in accordance with the arbitration agreement in the contract, and asked the Arbitration Tribunal to order the buyer to pay the money and the interest. The buyer, on the other hand requested the Tribunal to order the seller to replace the goods that did not meet the required standard of quality and to compensate the buyer for the damages caused.

The parties did not establish in the contract which law would govern it. The Tribunal therefore determined, on the basis of such links as the place of business of

the buyer and the place for the delivery of goods, that the law of the country most closely connected to the contract, i.e. the domestic law of China, would be applied. The Tribunal further held that, since the place of business of both the buyer and the seller was situated in the territory of two States Parties to CISG, the Convention should take precedence for the settlement of disputes relating to the contract.

Concerning the dispute over the payment for the goods, the Tribunal held that the contract clearly provided that the method of payment was a letter of credit. The seller would hand the original copy of the bill of lading over to the buyer only on condition that the buyer requested and promised to accept all risks to allow him to take delivery of the goods. In view of this and the principle of good faith (Article 7 (1) CISG), the Tribunal ruled that the buyer had an obligation to make prompt payment for the goods (Article 53 CISG) upon receiving the original bill of lading and taking delivery of the goods. This obligation to pay immediately for the goods was not affected by the dispute over the quality of the goods, which arose after they had been accepted.

Concerning the buyer's counterclaim with regard to the quality of the goods, the Tribunal held that, under Article 38 CISG, as long as the buyer had a reasonable opportunity to inspect the goods at the port of destination, it should not normally delay inspection till the goods had arrived at a new port of destination. Since the buyer had failed to inspect the goods at the port of destination, it was difficult to determine whether the defects in the goods had existed prior to delivery or had occurred during their onward journey from the port of destination to Shanghai. The Tribunal finally ruled, however, in view of the relevant evidence, that the seller must accept appropriate responsibility for the quality of the goods.

The Tribunal's final decision was that the buyer ought to pay the seller for the goods plus interest (Article 78 CISG), after a deduction for the defective goods delivered by the seller.
