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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 1116: CISG [1(1)(a); 4]; 61; 62

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

20 September 2006

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/060920c1.html>

Abstract prepared by Haocen Shi

A Chinese buyer and a Belgian seller signed a contract for the sale of electric welders. The contract provided that the buyer would pay 40 per cent of the price of the goods before delivery, and the balance within 7 days after taking delivery. After the contract was signed, the seller delivered the goods to the buyer, after receiving 40 per cent of the payment. However, the buyer did not pay the balance within 7 days after taking delivery of the goods as agreed to in the contract. The parties went on to sign a supplementary agreement, establishing the total amount of the balance, the deadline for the payment and the way to calculate a penalty for further delays in payment. As the buyer did not pay the sum due, the seller initiated arbitration proceedings, asking the Arbitration Tribunal to order the buyer to pay the sum owed and the penalty for breaching the contract by delaying the payment.

The parties had not established in the contract a law to govern it. Since the places of business of the two parties were in States Parties to CISG, the Tribunal ruled, under article 142 of the General Rules of the Civil Code of the People's Republic of China, that the case should be governed first and foremost by CISG. Matters not provided for in the Convention should be governed by the law of the State most closely connected with the case, which was Chinese law.

The buyer did not make any defence or attend the hearing after being legally notified. The Tribunal ruled that the buyer forfeited its rights to defend itself or give evidence, and must therefore accept the relevant consequences, namely that the Tribunal could determine the relevant circumstances on the basis of the written submission by the seller and the hearing.

Regarding the sum owed, the Tribunal found on the basis of the evidence submitted by the seller that the seller had not breached the contract. The buyer, on the other hand, had acted in breach of the contract, and should bear full liability for that. Under articles 61 and 62 of the Convention, the Tribunal ruled that the buyer should pay the seller the sum owed. As for the penalty for the delay, the Tribunal found that the Convention did not have any provision for penalties and therefore ruled according to the law of contract of the People's Republic of China in support of the seller's request.

Case 1117: CISG [1(1)(a); 4]; 45; 46(3); 74

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

31 May 2006

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/060521c1.html>

Abstract prepared by Haocen Shi

A Chinese buyer and a seller from Singapore signed a contract for the purchase of diesel power generation units. The buyer made full payment for and took delivery of the goods according to the contract. However, the units started to have problems while under warranty. The buyer contacted the seller several times to seek remedies, but the latter refused to honour its guarantee obligations. As a result, the buyer initiated arbitration proceedings, asking the Arbitration Tribunal to order the seller to accept responsibility for damages. The buyer also claimed that the seller (first respondent) was an agent of Company K (the second respondent) and Company D (the third respondent) in Singapore. They should therefore accept joint liability.

Both the second and the third respondents disputed jurisdiction. The Tribunal decided on the basis of prima facie evidence that the Tribunal had jurisdiction over the second respondent but not over the third respondent.

The seller (the first respondent) argued that in selling the power generation units it had acted as an agent of the second respondent. The provisions of the agreement for the purchase of the units that it had signed with the buyer should thus be directly binding for the second respondent. The liability both for breach of contract and for tort ought therefore to be assumed by the second respondent.

The second respondent argued that no arbitration agreement or clauses existed between it and the buyer, and that its relationship with the first respondent was not one of agency. Furthermore, the problems that the machines had were caused by inappropriate operation by the buyer rather than production. If the buyer wished to claim damages for breach of the contract, the second respondent was not the proper subject for such a claim. If the buyer sued for tort liability, its claim should be rejected as the machine did not have any defects.

According to the Tribunal, the relationship between the seller (the first respondent) and the second respondent should be governed by the law of Singapore, since both parties had their place of business in Singapore. The Tribunal found that, under Singaporean law, no relationship of agency by agreement existed between them.

As for the rules regarding the international sale of goods, the seller and the buyer had not established in the contract the law by which the contract would be governed. In view of the fact that the places of business of both parties were in States Parties to CISG, the Tribunal ruled that, under article 142 of the General Rules of the Civil Code of the People's Republic of China, the case should be governed first and foremost by the Convention. Matters not provided for in the Convention should be governed by the law of the State most closely connected with the case, which was Chinese law.

Regarding liability for the failures of the machines, the Tribunal established that since the seller was not an agent of the second respondent it should be responsible

for repairing any defects in the goods. Because of its refusal to do so, and because of the non-conforming goods, the buyer had suffered damages. Under article 45, 46(3) and 74 of the Convention, the Tribunal ruled that the seller should compensate the buyer for damages, which in the case at hand consisted of the costs of repairing the machines.

Case 1118: CISG [1(1)(a); 4; 7]; 8; [9]

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

7 December 2005

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/051207c1.html>

Abstract prepared by Panfeng Fu

A Chinese buyer and a German seller signed a contract for the purchase of electrical warm-air heaters and other products. The goods were to be delivered c.i.f. During the performance of the contract, the buyer asked to return the goods under the clauses for the return of goods in the contract. However, the parties did not reach an agreement on such return. The buyer then initiated arbitration proceedings, asking the Arbitration Tribunal to order the seller to accept the returned goods promptly, refund the money paid, pay a penalty for delaying the refund of the sum paid, and accept responsibility for the import duty related to the goods, storage charges and other fees.

The parties had not made any provision in the contract regarding the law by which disputes would be governed. Since the places of business of the parties were in States Parties to CISG, the Tribunal ruled that the case should be governed first and foremost by the Convention. For matters not provided for in the Convention, the Tribunal held that, according to the principle of the closest connection, the domestic law of China should be applied.

The Tribunal held that the request by the buyer to return the goods was in line with the provisions of the clauses on the return of goods in the contract, which should be upheld. In accordance with these clauses, the seller should refund the money on the basis of the contract price, and be responsible for import duty and other relevant costs. However, the parties had different understandings of what was meant by "contract price". The difference mainly concerned whether the "contract price" should include freight. The Tribunal held that, under article 8 of the Convention, if the parties had different understandings of the term "contract price" all relevant circumstances should be taken into consideration to determine their intention; or the interpretation that a reasonable person would arrive at should be adopted. For this reason, the Tribunal held that the refund should be calculated at the unit price of each and every model among the goods returned. This was the way the buyer had calculated the price to be refunded in a letter sent to the seller, therefore "a reasonable person of the same kind as the seller would have understood the 'contract price'" in such a way.

With regard to the responsibility for the delay in returning the goods, the Tribunal, pursuant to PRC Contract Law, held that when the method of performance was not clearly described in the contract, the parties should abide by the principle of good faith and reach an agreement in accordance with the provisions of the contract or the relevant usages. In the case at hand the behaviour of the seller had been inconsistent

with the principles of honesty and credibility and the requirement that the contract was to be honoured in good faith (article 7 CISG). The seller had therefore breached the contract by violating the clauses concerning the return of goods. As for the penalty for breach of contract, the Tribunal held that the buyer's request was clearly based on what was set forth in the contract, and should therefore be supported. Nevertheless, the Tribunal held that the amount of the penalty established in the contract was too high, and made an adjustment to the amount in accordance with the relevant provisions of the contract law of the People's Republic of China. In addition, the Tribunal upheld the buyer's request that the seller should pay for storage costs.

Case 1119: CISG 4; 14; 15(1); 18(2); 45; 61; 74; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

9 November 2005

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/051109c1.html>

Abstract prepared by Weidi Long

An Australian buyer and a Chinese seller entered into a contract for the sale of DVD players. The contract specified that the goods would be loaded and shipped in one batch, that the payment would be made by letter of credit (L/C) and that the L/C could only be cashed after all the goods had been delivered. However, the seller shipped the goods in five batches, and the L/C was cashed when only a portion of the goods had been delivered. The buyer argued that the seller had been late in delivering the goods, and the way in which the goods had been delivered was not in line with what was agreed in the contract. This had caused heavy economic losses for the buyer. The buyer initiated arbitration proceedings, asking the Arbitration Tribunal to order the seller to pay a penalty for having breached the contract by its delay in delivering the goods, to compensate the buyer for the extra shipping costs due to the fact that the seller had delivered the goods in batches and the loss of interest due to the cashing of the L/C sooner than agreed and to pay the arbitration fees.

The parties had not decided in the contract on a law to govern disputes. Since their places of business were in States Parties to the CISG, the Tribunal determined that the case should be governed primarily by the Convention. The Tribunal also noted that the Convention was not applicable to the question of the validity of the contract or of the ownership of the goods, under article 4 of the Convention. It further held that, for matters not provided for in the Convention, according to the principle of the closest connection the domestic law of China should be applied.

Under article 14, article 15(1) and article 18(2) CISG, the Tribunal held that a contract between the parties existed and was legally valid under the contract law of the People's Republic of China. Pursuant to this legislation, the Tribunal ruled that the seller had delayed the delivery of the goods, and should be responsible for breach of contract.

As for the buyer's request for the payment of a penalty for breach of contract, the Tribunal held that the issue should be governed by the relevant provisions in the contract law of the People's Republic of China as the Convention did not contain relevant provisions. The Tribunal therefore supported the buyer's request.

Regarding the extra costs that the buyer had had to pay for shipping the goods in batches, the Tribunal held that the L/C stipulated that the seller was not to ship the goods in batches, and that the seller's decision to change the manner of delivery was another breach of contract. Under articles 45, 61 and 74 CISG, the Tribunal ruled that the seller must pay compensation for damages.

As for the loss of interest due to the early cashing of the L/C, the Tribunal held that the loss of interest was caused by the seller delaying the delivery, however the buyer did not have any evidence to prove that the loss caused by such a delay was greater than the penalty agreed to in the contract. The Tribunal therefore held that the buyer did not have any legal basis for claiming compensation for the loss of interest after receiving the compensation for breach of contract (article 78 CISG).

Case 1120: CISG 53; 62; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

9 April 2004

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/040409c1.html>

Abstract prepared by Feifei Wang

A Chinese seller and a United States buyer signed three contracts for the sale of handicraft items. The seller performed all its obligations to deliver the goods in accordance with the contract, but the buyer delayed part of the payment for the goods despite repeated reminders from the seller. The seller applied for arbitration and requested the Arbitration Tribunal to order the buyer to pay the sum owed, with interest, the arbitration fees and other related fees.

In view of the fact that the places of business of the parties were in States Parties to CISG, and the parties had not opted out of the Convention in the contract, the Tribunal held that the dispute should be governed by the Convention.

The Tribunal found that the seller had delivered to the buyer the goods covered by the contract, and that the buyer had taken delivery. The Tribunal held that, under articles 53 and 62 of the Convention, the seller had a right to demand that the buyer pay the sum owed; under article 78 of the Convention, the seller was also entitled to interest on the money owed by the buyer. The Tribunal upheld the seller's request.

Case 1121: CISG 1(1)(a); 4(a); 54

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

3 December 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/031203c1.html>

Abstract prepared by Shuo Peng

A Chinese seller and a United States buyer signed a contract for the sale of wigs. The buyer had not made the payment as agreed a long time after the goods had been delivered to it. 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 sum for the goods, the penalty for breaching the contract and the arbitration fees.

Since the places of business of the parties were in States Parties to CISG, the Tribunal ruled under article 1(1)(a) CISG that the case should be governed by the Convention and that those matters for which the Convention did not provide would be governed by Chinese law following the principle of the closest connection.

Regarding the issue of the validity of the contract, the Tribunal held that, under article 4(a) CISG, the Convention did not cover such an issue. The Tribunal found that the contract was valid according to the contract law of the People's Republic of China, and was legally binding for both parties.

Regarding the disputed issue of the contract price, the Tribunal held that, under article 54 of the Convention, the buyer did not have due reasons to refuse to pay the sum for the goods. This was a breach of contract for which the buyer should bear responsibility. As the buyer did not provide any evidence of the contrary, the Tribunal upheld the request of the seller. As to the seller's claim that the buyer should pay a penalty for breach of contract, the Tribunal supported that demand as well, since it was based on the contract and was in line with legally binding provisions, moreover, the buyer had not disputed it.

Case 1122: CISG 1; [11; 12]; 14(1); 19; 74; 77; 79

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

17 September 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030917c1.html>

Abstract prepared by Zhe Zhang

In response to an offer made by an Australian seller, a Chinese buyer accepted to purchase Australian cotton. At the time of signing the contract, the buyer made changes to the number of shipments, the quantity of goods in each shipment and the time of loading contained in the sales confirmation faxed by the seller, and also deleted clauses regarding liability for breaching the contract. The seller expressed its acceptance verbally. Afterwards, being unable to obtain the required import quota and licence, the buyer wrote to the seller indicating that it could temporarily not honour the contract. Nor had the buyer drawn up a letter of credit as required by the contract. After fruitless discussions between the parties, the seller initiated arbitration proceedings, claiming that the buyer had breached the contract, and asked the Arbitration Tribunal to order the buyer to compensate for damages due to the difference from the market price, with interest, pay the cost of storage with interest, and cover the arbitration fees and the seller's legal fees. The buyer argued that its changes to the sales confirmation amounted to a new contract which had been accepted by the seller. The original contract between the buyer and the seller had never entered into force, and there was no issue of a breach of contract or a need for compensation.

Since the places of business of the parties were in States Parties to the CISG, the Tribunal ruled under article 1 CISG that the dispute should be governed by the Convention. The Tribunal held that, under article 14(1) and article 19 CISG, the changes made to the sales confirmation letter were not substantive amendments to the agreement with the seller and therefore had not become a new agreement. Since the seller had accepted verbally the changes made to the sales confirmation letter by the buyer, the contract was legally valid, and its content was the sales confirmation

letter as revised by the buyer. The Tribunal also held that the problems with the import quota and licence were not grounds exempting the buyer from the responsibility for breach of contract (article 79 CISG). The Tribunal ruled that the buyer was responsible for breach of contract, and under article 74 of the Convention it should compensate the seller for the economic loss caused to it by the buyer's failure to perform the contract. At the same time, though, the seller had not performed its duty to mitigate the losses after learning that the buyer was likely to breach the contract [it had nevertheless purchased the goods to be shipped to the buyer] and the buyer could not foresee the seller's damage. The seller was thus responsible to a certain extent for the losses (article 77 CISG). The Tribunal therefore ruled, after assessing the responsibilities of both parties, that the buyer must compensate the seller for damages due to a reasonable difference from the market price, although not in the measure claimed by the seller. Furthermore, the buyer had to pay part of the storage costs and the related loss of interest. According to the Tribunal, however, the seller had to bear part of the storage fee. As a matter of fact, despite indications that the buyer might breach the contract, the seller had stored the goods that were supposed to be delivered, without further asking the buyer for the performance of the contract.

Case 1123: CISG 1(1)(a); 29; 38; 74

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

8 July 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030708c1.html>

Abstract prepared by Zhe Zhang

A Chinese buyer and a seller from the United States of America signed a series of contracts for the purchase of honey copper and birch and cliff copper. The seller delivered batches of the contracted goods to a carrier, who signed off a clean bill of lading. After the goods arrived at the destination port, the parties signed a memorandum agreeing to reduce the price of the copper because a portion of the goods had quality problems and the market prices were volatile. However, the buyer refused to make payment. Eventually the seller had to hand over to the buyer the documents related to the goods without receiving any payment. The buyer went on to sell the goods to a third party, and the third party paid the amount (lower than the contract price stipulated in the original contract between the seller and the buyer) directly to the seller. The seller initiated arbitration proceedings, arguing that the buyer had breached the contract, and asked the Arbitration Tribunal to order the buyer to compensate for the damages and pay the arbitration fees and other related fees.

The parties had not chosen in the contract a law to govern disputes. The Tribunal found that the places of business of the parties were in States Parties to the CISG and under article 1(1)(a) CISG, the dispute in this case should be governed by the Convention. The Tribunal held that, under article 29 CISG, the memorandum signed after the goods arrived at the destination port represented a voluntary agreement between the seller and the buyer. The changes made to the original price were thus effective and the seller's allegations that the memorandum was void were rejected.

The Tribunal further found that there was no evidence showing that the buyer had followed article 38 of the Convention in examining the goods, i.e. within 90 days after they had arrived at the port of destination. In claiming that the goods had serious quality problems and refusing to take delivery and make payment, without providing any evidence confirming the quality problems, the buyer had clearly violated both the provisions of the CISG, and the contract. Under article 74 CISG, the Tribunal ordered the buyer to compensate the seller for its loss and to cover the other costs related to arbitration.

Case 1124: CISG [1(1)(a)]; 77; [78]

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

30 April 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030412c1.html>

Abstract prepared by Haozhen Duan

A Chinese seller and a Singaporean buyer entered into a contract for the sale of pig iron. According to the contract, the buyer would send a ship at an agreed time so that the goods could be shipped in two shipments. The seller sent several faxes to notify the buyer to send the ship after preparing the first batch of goods, but there was no word from the buyer by the last day available for loading the ship. The seller notified the buyer that it would stop performing the relevant obligations relating to the first batch of goods, and would reserve the right to claim for compensation. Later, the two parties performed their respective obligations in relation to the second batch of the goods. The seller initiated arbitration proceedings, and requested the Arbitration Tribunal to order the buyer to compensate it for such damages as the storage cost for the first batch of goods, the direct loss from price differences and the loss of interest on the sum that should have been paid for the goods.

In view of the fact that the place of business of the parties were in State Parties to CISG, the Tribunal decided that the dispute in this case should be governed by the Convention.

The buyer argued that the seller had decided unilaterally to stop performing the obligations for the first batch of goods, and was therefore not entitled to demand compensation. The Tribunal held that the seller had stated clearly in its faxes that it reserved the right to claim compensation, and that the failure of the buyer to send a ship for loading the goods at the time agreed upon in the contract was a breach of contract.

Regarding the costs of storage, the Tribunal held that, in accordance with article 77 of the Convention, the evidence provided by the seller did not prove that the costs had any direct connection with the contract or with the buyer, nor that the seller had taken timely and reasonable measures to prevent any increase in the losses. The Tribunal, therefore, only partially supported this request from the seller.

Regarding the loss of interest and the loss from price differences, the Tribunal held that the seller had not proved that the goods resold at a discount price were those under this contract, and the interest for raising finance and the loss from the discounted resale were risks from its own operations. They should therefore be

borne by the seller itself. However, the Tribunal, in consideration of the principles of equity and justice, supported part of the seller's request.
