



General Assembly

Distr.: General

11 July 2006

Original: English

United Nations Commission on International Trade Law

CASE LAW ON UNCITRAL TEXTS (CLOUT)

Contents

	<i>Page</i>
Cases relating to the United Nations Sales Conventions (CISG)	3
Case 629: CISG [1 (1) (a)]; [8]; [25]; 61 (1); [63 (1)]; 64 (1) (a); 74; 75; [77]; 78 - Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)	3
Case 630: CISG 1 (1) (a); 3 (1); 45 (1); 46-50; 51; 71; 73 (1); 74-77; 78 - Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)	4
Case 631: CISG 25; 54; 64 (1) (a); 72; 74; 75; 77; 78 - Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)	5
Case 632: CISG 53; 54; 57 - United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio, No. 00-18761 and Adversary No. 01-1045, In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV) (10 April 2001)	7
Case 633: CISG 1; 8 - United States: U.S. [Federal] District Court for the Southern District of New York, No. 00 CIV 5901(HB), Atla-Medine v. Crompton Corp. (7 November 2001)	7
Case 634: CISG 38 (1); 39 (1); 59; 61; 74; 78 - Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)	8
Case 635: CISG 1 (1) (b); 29 (1); 57 (1) (a) - Germany: Oberlandesgericht Karlsruhe, 7 U 40/02 (10 December 2003)	9
Case 636: CISG 1 (1) (b); 7 (2); 30; 35; 36; 53; 62; 78 - Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)	10
Index to this issue	11



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.

Copyright © United Nations 2006

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.

CASES RELATING TO THE UNITED NATIONS SALES CONVENTIONS (CISG)

Case 629: CISG [1 (1) (a)]; [8]; [25]; 61(1); [63 (1)]; 64 (1) (a); 74; 75; [77]; 78

Switzerland: Kantonsgericht Zug

A3 2001 34

12 December 2002

Published in German: Internationales Handelsrecht (IHR) 2004, 65-67; see also

<http://www.cisg-online.ch/cisg/urteile/720.htm>

English translation: <http://cisgw3.law.pace.edu/cases/021212s1.html>

Abstract prepared by Corinne Widmer

The case deals primarily with the seller's right to recover the difference between the contract price and the price in a substitute transaction where the buyer has refused to take delivery of the goods. The case also discusses the applicable interest rate under the CISG and the scope of a contractual clause excluding the right to raise counterclaims.

A German company (the seller) entered into a contract with a Swiss company (the buyer) for the purchase of methyl tertiary-butyl ether [MTBE]. The contract set out a period of time within which the buyer was to take delivery of the goods. Before this period had passed, the buyer informed the seller that it would not take delivery until its claims against the seller had been settled. The seller disputed the buyer's claims and fixed an additional period of time for the buyer to take delivery. When the buyer failed to take delivery within the additional period of time, the seller declared the contract avoided. The seller subsequently resold the goods to a third company at a price less than that agreed on in the contract with the buyer and brought suit against the buyer before the Kantonsgericht Zug for the difference in price plus interest. In the same suit, the buyer sought to enforce its alleged claims against the seller by declaring a set-off and, alternatively, by way of counterclaim.

On the merits of the seller's claim, the Court found that the buyer had fundamentally breached the contract by refusing to take delivery of the goods and that the seller was entitled to avoid the contract pursuant to articles 61 (1) and 64 (1) (a) CISG. The Court held that the seller was entitled to recover damages under article 74 CISG and that, pursuant to article 75 CISG, the seller could recover the difference between the contract price and the price in the substitute transaction. The Court did not accept the buyer's contention that the seller had waited too long before entering into the substitute transaction and was therefore responsible for the fall in the market price for MTBE. The Court noted that the buyer had at first not actually refused the goods, but rather had made acceptance of the goods contingent on the settlement of its claims. Under these circumstances, the seller was entitled to wait until it became certain that the buyer would refuse the goods before entering into a substitute transaction. The Court observed that once it had become clear that the buyer would not take delivery, the seller had found a new buyer for the goods within two days. As such a period of time could not be considered too long, the seller was not responsible for any fall in the market price.

On the seller's claim for interest, the Court stated that under article 78 CISG, interest is due on the purchase price or any other sum in arrears and that it accrues from the time payment is due. The Court held that as the CISG does not determine

the applicable interest rate, reference must be made to the applicable domestic law. Therefore the Court determined the interest on the basis of German law.

With regard to the buyer's counterclaim, the Court observed that in the sales contract, the buyer had agreed to pay the purchase price "without offset or counterclaim" and "without any withholding, deduction, set-off or counterclaim". The Court noted that the purpose of such a clause could only be to ensure that payment of the purchase price might be enforced without being delayed by either assertions of set-off or counterclaims. The Court rejected the buyer's submission that the meaning of the term "without counterclaim" was not sufficiently clear, nor its scope foreseeable. Referring to the German translation of the term "counterclaim" the Court held that the parties had clearly intended to exclude the possibility of raising counterclaims. Accordingly, the Court did not consider the merits of the buyer's counterclaim.

Case 630: CISG 1 (1) (a); 3 (1); 45 (1); 46-50; 51; 71; 73 (1); 74-77; 78

Switzerland, Court of Arbitration of the International Chamber of Commerce, Zurich

ICC Arbitration Case No. 9448

July 1999

Published in English: ICC International Court of Arbitration Bulletin, Vol. 11/No. 2 (Fall 2000) 103-107; also available at

<<http://www.cisg-online.ch/cisg/urteile/707.htm>>

Abstract prepared by John Staley Heatly

The case involves a seller's demand for payment of goods under an instalment contract, and the buyer's claim that it should be allowed an offset in damages as the result of an alleged breach of the contract by the seller.

The seller, a manufacturer of roller bearings, entered into a frame contract for supplying the U.S. market through an exclusive representative, the buyer. The contract was performed satisfactorily for two years, after which the buyer fell behind on the payments and then ceased making payments. The seller initiated arbitration proceedings in order to be paid for outstanding invoices for the goods delivered, plus interest. The seller additionally sought interest on separate invoices that were paid late. The buyer claimed that the delivered goods were not in conformity with the contract, were delivered late, or were delivered in insufficient quantities, and argued that its damages should be offset against the seller's claimed amount.

The buyer failed to pay the advance costs fixed by the ICC International Court of Arbitration for its counterclaim. The Arbitral Tribunal thus decided not to consider the buyer's offset claims *per se* but simply as defences to the seller's claims.

The contract stipulated that the law of Switzerland applied to "all matters respecting the making, interpretation and performance of this contract." The Arbitral Tribunal determined that the contract between the buyer and the seller was a contract for sale of goods under article 3 (1) CISG, and that the CISG applied pursuant to article 1 (1) (a) CISG, as Switzerland is a Contracting State.

The Arbitral Tribunal denied the buyer's claim, based on article 50 CISG, to have the sale price reduced as a consequence of the nonconformity of the goods with the contract, because the nonconformity claim referred to goods delivered in 1995,

whereas the invoices on which the seller based his claim referred to goods delivered in 1996. Additionally, the buyer claimed an offset because various shipments of goods had not been delivered on time or had not included the stipulated quantity of roller bearings. The buyer claimed that these deficiencies allowed it to withhold payment for the said shipments. The Arbitral Tribunal determined that the buyer was not entitled to withhold payment for partial or late shipments. It noted that, according to article 45 (1) CISG, if the seller fails to perform any of its obligations under the contract or the Convention, the buyer may either exercise the rights provided for in articles 46 to 52 CISG or claim damages as provided for in articles 74 to 77 CISG. According to article 51 CISG, when the seller delivers only a part of the goods, or if only a part of the goods delivered is in conformity with the contract, then articles 46 to 50 CISG apply. In the case of an instalment contract, should certain partial deliveries not be made on time, article 73 (1) CISG is applicable to determine the effect of such delay. Contrary to what is provided for in all these provisions, the buyer did not resort to the remedies offered by the CISG, but rather withheld payment of the amount due under the contract for deliveries already received. However, the Convention does not give him the right to do so.

The Arbitral Tribunal also considered the application of article 71 CISG to the dispute. This article gives a party the right to withhold its performance corresponding to a future anticipated breach. The Tribunal held article 71 CISG to be inapplicable in the case at hand, as the buyer was not attempting to suspend performance for a future breach, but was rather attempting to withhold payment for shipments already received.

According to article 78 CISG, finally, if a party fails to pay the price of any other sum that is in arrears, the other party is entitled to interest on it. The rate to be applied, however, is a matter of domestic law. The Arbitral Tribunal thus applied the Swiss law to determine the applicable interest rate to be paid by the buyer.

Case 631: CISG 25; 54; 64 (1) (a); 72; 74; 75; 77; 78

Australia: Supreme Court of Queensland
10680 of 1996

Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation)
(formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD
17 November 2000

Published in English: [2000] QSC 421 (17 November 2000)

<<http://cisgw3.law.pace.edu/cases/001117a2.html>>

Abstract prepared by Marianne Rose

The case dealt with a number of issues: whether a failure to establish a timely letter of credit constituted a fundamental breach of contract; whether the seller was entitled to avoid the contract and recover from the buyer the losses claimed on the grounds of the buyer's repudiation and/or non-compliance with an essential term of the contract; and whether the seller had taken reasonable steps to mitigate damages. The applicability of the CISG was not in dispute.

Downs Investment, an Australian company (the seller), entered into a contract with the Malaysian company Perwaja Steel (the buyer), for the purchase and shipment of scrap steel to be shipped from Australia to Malaysia. According to the contract, an irrevocable letter of credit from the buyer in favour of the seller was required prior to shipment. Shortly before having to provide the letter of credit, the structure and

management of the buyer changed. Under this new management structure, the buyer was obliged to obtain permission from an executive committee before it could provide a letter of credit. The buyer failed to provide a letter of credit upon the seller's request, as the executive committee could not communicate any instructions within a short time. Upon receipt of this communication from the buyer, the seller replied purporting to accept the buyer's repudiation of its contractual obligations and terminated the contract.

The case was heard in the Supreme Court of Queensland. The court held that the legislation relevant to determine the dispute was the *Sale of Goods (Vienna Convention) Act* 1986 (Qld), because the parties to the contract had agreed that the law applying in Brisbane would define their contractual obligations, and that Act required the application of the CISG.

Pursuant to article 64 CISG, the court determined that the seller could declare the contract avoided if the buyer failed to perform any of its obligations that amounted to a fundamental breach of the contract. The court then applied the definition of "fundamental breach" as defined in article 25 CISG. In the court's view, the refusal to establish a timely letter of credit was clearly a fundamental breach within the meaning of article 25 and article 64 (1) (a) of the Convention.

The court also considered the application of article 72 CISG and concluded that, if prior to the performance of the contract, it was clear that one of the parties would commit a fundamental breach, the other party might declare the contract avoided. If time allowed, the seller was required to give reasonable notice to the buyer to permit him to provide adequate assurance of his performance.

The court found that the failure to establish a letter of credit in the circumstances of the case was a failure by the buyer to meet its "obligation to pay the price" of the goods in the meaning of article 54 CISG, which in fact states that the buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made. The change of management structure in the buyer, which required executive management committee approval for a letter of credit, and the refusal of the committee was held to be no excuse at law.

Once established that the buyer's breach of contract caused significant loss to the seller, the court looked at articles 74 and 75 CISG to determine the relevant damages. The court accepted that the sub-charter of the original ship as soon as possible was a reasonable step (in the sense of article 77 CISG) to minimise the damage incurred by the seller in having a large vessel standing by at the seller's expense and not being used for the purpose of shipping its scrap steel to the buyer. The court also expressed that the resale of the scrap to another buyer within two months of the seller's acceptance of the buyer's repudiation of the contract clearly satisfied the requirements of article 75 CISG, as it was done within a reasonable time. In the court's view, the seller promptly took all steps reasonably necessary to mitigate the damages it suffered as a consequence of the buyer's repudiation.

Therefore, the court gave judgment for the seller, including interests (article 78 CISG).

Case 632: CISG 53; 54; 57

United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio
No. 00-18761 and Adversary No. 01-1045

In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV)

10 April 2001

Published in English: Bankruptcy Reporter 261, 424; Collier Bankruptcy Cases, Second Series 46, 242; Bankruptcy Court Decisions 37, 213; UCC Reporter Service, Second Series (Callaghan) 44, 722

Abstract prepared by Peter Winship, National Correspondent

The issue before the bankruptcy court was whether the estate of the bankrupt debtor included goods allegedly sold to the debtor.

The bankrupt debtor, a corporation with its place of business in the United States, concluded a contract to purchase pig iron from its parent corporation, a company with its place of business in the United Kingdom. The contract provided that the debtor was to pay against tender of documents of title (articles 54 and 57 CISG). The parent corporation in turn concluded a contract to purchase pig iron from a Russian manufacturer and financed the transaction by granting a security right in the pig iron to its bank. This arrangement was made because of the poor credit rating of the bankrupt debtor. The bankrupt debtor neither signed the written contract with its parent nor did it make payments under that contract before bankruptcy proceedings commenced. The pig iron was shipped from Russia to the United States and stored in warehouses there. The bills of lading and warehouse receipts did not mention the debtor and the debtor never had possession of these documents. The warehousemen acknowledged that they held the pig iron for the parent's bank. The debtor commenced bankruptcy proceedings and brought a claim that the pig iron was part of the bankruptcy estate.

The bankruptcy court found that the debtor had not carried its burden of establishing that the pig iron was part of the bankruptcy estate. Citing both the CISG and domestic law, the court stated that payment of the price was a significant factor in the transfer of title (article 53 CISG) and that the debtor had failed to pay the price in this case.

Case 633: CISG 1; 8

United States: U.S. [Federal] District Court for the Southern District of New York
No. 00 CIV 5901(HB)

Atla-Medine v. Crompton Corp.

7 November 2001

Published in English: 2001 U.S. Dist. LEXIS 18107; 2001 WL 1382592

Abstract prepared by Peter Winship, National Correspondent

The issue before the court was whether it should dismiss the plaintiff's claim that there had been a breach of a sales contract because the pleadings failed to establish that the parties had a contract.

For many years a distributor with its place of business in the United States purchased vinyl grade tin stabilizing chemical products from a manufacturer with its place of business in Germany. In 1998 a competitor of the US distributor with its place of business in the United States acquired the German manufacturer through an asset swap. Representatives of the distributor and the competitor met to negotiate

the continuing supply of the chemical products. In the only written statement, the competitor agreed to continue business on the same terms and conditions as with the German manufacturer for the remainder of 1998. The distributor said, however, that during negotiations the competitor represented that business would continue and no time limit was discussed. The competitor subsequently changed the terms and conditions of the sale of the chemical product and offered to continue business only if the distributor became its agent rather than continue as a competing distributor. The competitor also persuaded a major customer of the distributor to buy directly from the competitor. The distributor sued the competitor for breach of contract and on several theories of tort. The competitor moved for summary judgment.

The court granted summary judgment with respect to the distributor's breach of contract claims. The court declined to decide whether the contract was governed by the CISG (article 1) rather than domestic US law because there would be no material difference in outcome. When examining the evidence of negotiations and communications, the court gave significant evidentiary weight to the written statement because it was the only clear communication between the parties as to the length of the continuing distributorship. The court concluded that, even in the light of article 8 CISG, there was no contract to continue business beyond 1998 and therefore the seller could not be assumed to breach the contract.

Case 634: CISG 38 (1); 39 (1); 59; 61; 74; 78

Germany: Landgericht Berlin

103 O 324/02

21 March 2003

Published in German: <<http://www.cisg-online.ch/cisg/urteile/785.htm>>

English translation available at: <<http://cisgw3.law.pace.edu/cases/030321g1.html>>

Abstract prepared by Ann-Catrin Theisen

The case focuses on the notice of nonconformity under article 39 (1) CISG and on the requirements related to its timeliness.

An Italian public company entered into a contract with a German buyer for the sale of fabrics. Almost seven weeks after the goods were delivered to the buyer, the latter gave notice of nonconformity to the seller, announcing at the same time his intention of having the purchase price reduced because of the nonconformity of the goods.

The seller denied any nonconformity and claimed that the notice of nonconformity was not timely. The buyer, however, alleged a latent defect, stating that the nature of the nonconformity was such as to become obvious only once the fabric was dyed.

The court held that the seller had a claim for the purchase price pursuant to article 53 CISG. The court stated that the buyer had lost the right to rely on the lack of conformity pursuant to article 39 CISG, since he had failed to give timely notice of nonconformity to the seller. Examining the time limit within which the buyer has to give notice of nonconformity, the court emphasized that both the period within which the buyer has to examine the goods pursuant to article 38 (1) CISG and the period in which the buyer has to notify the seller of any defects or nonconformity pursuant to article 39 (1) CISG must be taken into account. The court pointed out that even if the buyer reports the defects to the seller immediately after having

detected them, he can lose his right to rely on the lack of conformity if he did not comply with the short period of examination of article 38 (1) CISG.

According to the court, even assuming that the nonconformity only came to light once the fabrics had been processed, the buyer should have randomly dyed samples of the fabrics in order to comply with his obligation to examine the goods. Moreover, since the buyer had requested immediate delivery of the goods, he should have examined the goods within as short a period as practicable in the circumstances and within the seller's reasonable expectation. Thus, a notice given almost seven weeks after delivery could not be considered timely.

The court noted that under article 59 CISG, a formal request for payment is not required on the part of the seller to demonstrate that the buyer is in arrears. Pursuant to articles 61 and 74 CISG, the seller was awarded reimbursement of attorney's fees incurred in connection with a reminder to the buyer. The court awarded default interest pursuant to article 78 CISG. With regard to the interest rate, the court pointed out that there were divergent opinions on this question, since article 78 CISG expressly permits the award of interest without, however, stating the rate. In the end, the court decided to apply German law as the law of the State in which the debtor, i.e., the buyer, had his place of permanent residence, domicile or establishment.

Case 635: CISG 1 (1) (b); 29 (1); 57 (1) (a)

Germany: Oberlandesgericht Karlsruhe

7 U 40/02

10 December 2003

Published in German: [2004/2] Internationales Handelsrecht 62-65; CISG-online.ch website <<http://www.cisg-online.ch/cisg/urteile/911.pdf>>

English translation available at: <<http://cisgw3.law.pace.edu/cases/031210g1.html>>

Abstract prepared by Ann-Catrin Theisen

The case examines the influence of an agreement regarding the terms of payment on the place of payment pursuant to article 57 (1) (a) CISG.

A German seller entered into a contract with a Brazilian buyer for deliveries of carpets. Since the buyer did not settle all payments for the deliveries, the parties concluded a so-called "New Agreement" on the balance, according to which the buyer acknowledged its payment obligation of the remaining receivables. This obligation was to be settled by cheque, with payments due on fixed dates each month. Furthermore, according to a "Record", the parties entered into an agreement, which entitled the buyer to send back carpets up to a specified value. While some of the purchase price was settled by the buyer, there was still a remaining balance.

The seller brought suit at Karlsruhe Regional Court claiming the balance. The Regional Court held that the claim was inadmissible, since the seller had not substantiated if and to what extent the invoices submitted to the court had been discharged by the payment of the buyer. Moreover, the court denied its international jurisdiction with regard to the seller's claims arising out of the "New Agreement" in connection with the "Record".

On appeal, the Higher Regional Court of Karlsruhe held that, lacking any express choice of law by the parties and according to article (1) (1) (b) CISG, the applicable

law was the CISG, since the rules of private international law pointed to the application of the law of Germany, a Contracting State of the Convention.

On the substance of the dispute, the court held that, pursuant to article 57 (1) (a) CISG, the place of payment was the seller's place of the business in Germany.

The court considered the "New Agreement" as an agreement on the terms of payment: the court held that the parties were free to conclude such an agreement on the terms of payment in accordance with article 29 (1) CISG. The court further stated that the buyer's obligation to pay the remaining purchase price derived from articles 53 and 54 CISG: this obligation included freight costs even if they were shown separately. The overall price was to be paid at the [seller]'s place of business (CISG article 57 (1) (a)).

As to the issue of limitation of actions, the court held that the limitation of a seller's right to claim was neither governed by the CISG, nor by the UN Limitation Convention of 1974/1980, as Germany has not acceded to the latter Convention. As a result, German law was applicable to the question of prescription or limitation.

Case 636: CISG 1 (1) (b); 7 (2); 30; 35; 36; 53; 62; 78

Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires
105665

Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A.
21 July 2002

Published in Spanish: La Ley 18 June 2003 and on the Internet at

<<http://www.uc3m.es/uc3m/dpto/PR/dppr03/cisg/sargen11.htm>> and at

<<http://unilex.info/case.cfm?pid=1&do=case&id=925&step=FullText>>

English translation available at: <<http://cisgw3.law.pace.edu/cases/020721a1.html>>

Abstract prepared by Teresa Rodríguez de las Heras Ballell

The main focus of the case is on the procedure to determine the quality of the purchased goods when the buyer refuses to pay the price on the ground of nonconformity of the goods.

Cervecería y Maltería Paysandú S.A., an Uruguayan company (the seller) entered into a contract with Cervecería Argentina S.A. (the buyer), with its place of business in Argentina, for the purchase of malted barley to be delivered to the buyer's industrial plant in Zárate (Argentina), at the beginning of 1995 (article 30 CISG). The buyer accepted the delivery of the goods, but refused to fulfil his obligation to pay the price (article 53 CISG), alleging lack of conformity of the goods (articles 35 and 36 CISG). The seller brought suit for the payment of the price due plus interest.

Basing its ruling on several provisions of the Argentinean Commercial Code, the court of first instance upheld the seller's claim and ordered the buyer to pay the price, plus interest starting from the date the goods were delivered.

On appeal, the court stated that the CISG applied to the case by virtue of its article 1 (1) (b), since the Argentinean rules of private international law pointed to the application of the law of Argentina, a contracting state of the CISG. Since Uruguay was not yet a party to the Convention at the time the contract was concluded, the Convention could not be applied by way of article 1 (1) (a).

In order to determine the applicable law, the court considered the place of execution of the contractual obligation. This is where the “most characteristic performance” takes place and in a contract for the international sale of goods the “most characteristic performance” is the delivery of the goods rather than the payment of the purchase price. Therefore, since the goods were delivered in Argentina, Argentinean law was considered applicable.

With regard to the procedure to determine the nonconformity of the goods delivered, the court held that the issue was neither settled nor even contemplated by the CISG. Thus, on the basis of article 7 (2) CISG, the court turned to the law applicable by virtue of the rules of private international law, i.e. Argentinean law. Article 476 of the Argentinean Commercial Code requires nonconformity of the goods to be established by a fixed procedure based on arbitration: a procedure that the buyer did not follow. Even if it can be assumed that arbitration is not mandatory and can be replaced by a different procedure based on tests by experts, the court stated that the buyer had failed to submit convincing evidence demonstrating that the goods did not conform to the contract. The court held therefore that the seller was entitled to payment of the purchase price (article 62 CISG) plus interest (article 78 CISG), thus upholding the judgment rendered by the lower court.

Index to this issue

I. Cases by jurisdiction

Argentina

Case 636: CISG 1 (1) (b); 7 (2); 30; 35; 36; 53; 62; 78 - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

Australia

Case 631: CISG 25; 54; 64 (1) (a); 72; 74; 75; 77; 78 - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

United States

Case 632: CISG 53; 54; 57 - *United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio, No. 00-18761 and Adversary No. 01-1045, In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV) (10 April 2001)*

Case 633: CISG 1; 8 - *United States: U.S. [Federal] District Court for the Southern District of New York, No. 00 CIV 5901(HB), Atla-Medine v. Crompton Corp. (7 November 2001)*

Germany

Case 634: CISG 38 (1); 39 (1); 59; 61; 74; 78 - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

Case 635: CISG 1 (1) (b); 29 (1); 57 (1) (a) - *Germany: Oberlandesgericht Karlsruhe, 7 U 40/02 (10 December 2003)*

Switzerland

Case 629: CISG [1 (1) (a)]; [8]; [25]; 61 (1); [63 (1)]; 64 (1) (a); 74; 75; [77]; 78 - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 630: CISG 1 (1) (a); 3 (1); 45 (1); 46-50; 51; 71; 73 (1); 74-77; 78 - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

II. Cases by text and article

United Nations Sales Convention (CISG)

CISG 1

Case 633: - *United States: U.S. [Federal] District Court for the Southern District of New York, No. 00 CIV 5901(HB), Atla-Medine v. Crompton Corp. (7 November 2001)*

CISG 1 (1) (a)

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 1 (1) (b)

Case 635: - *Germany: Oberlandesgericht Karlsruhe, 7 U 40/02 (10 December 2003)*

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 3 (1)

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 7 (2)

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 8

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 633: - *United States: U.S. [Federal] District Court for the Southern District of New York, No. 00 CIV 5901(HB), Atla-Medine v. Crompton Corp. (7 November 2001)*

CISG 25

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

CISG 29 (1)

Case 635: - *Germany: Oberlandesgericht Karlsruhe, 7 U 40/02 (10 December 2003)*

CISG 30

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 35

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 36

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 38 (1)

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

CISG 39 (1)

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

CISG 45 (1)

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 46-50

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 51

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 53

Case 632: - *United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio, No. 00-18761 and Adversary No. 01-1045, In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV) (10 April 2001)*

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 54

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

Case 632: - *United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio, No. 00-18761 and Adversary No. 01-1045, In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV) (10 April 2001)*

CISG 57

Case 632: - *United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio, No. 00-18761 and Adversary No. 01-1045, In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV) (10 April 2001)*

CISG 57 (1) (a)

Case 635: - *Germany: Oberlandesgericht Karlsruhe, 7 U 40/02 (10 December 2003)*

CISG 59

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

CISG 61

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

CISG 61 (1)

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

CISG 62

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*

CISG 63 (1)

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

CISG 64 (1) (a)

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

CISG 71

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 72

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

CISG 73 (1)

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 74

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich—ICC Arbitration Case No. 9448 (July 1999)*

CISG 75

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 76

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 77

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

CISG 78

Case 629: - *Switzerland: Kantonsgericht Zug A3 2001 34 (12 December 2002)*

Case 630: - *Switzerland: Court of Arbitration of the International Chamber of Commerce, Zurich - ICC Arbitration Case No. 9448 (July 1999)*

Case 631: - *Australia: Supreme Court of Queensland, 10680 of 1996, Downs Investments Pty Ltd. (ACN 010 729 567) (in voluntary liquidation) (formerly known as Wanless Metal Industries Pty Ltd.) v. Perwaja Steel SDN BHD (17 November 2000)*

Case 634: - *Germany: Landgericht Berlin, 103 O 324/02 (21 March 2003)*

Case 636: - *Argentina: Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, 105665, Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A. (21 July 2002)*
