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### CASE LAW ON UNCITRAL TEXTS (CLOUT)

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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: (<http://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 803: CISG 36**

PRC: China International Economic & Trade Arbitration Commission [CIETAC],  
Shenzhen Commission  
30 January 2000  
Original in Chinese  
Published in English: <http://cisgw3.law.pace.edu/cases/000130c1.html>  
Abstract prepared by Zhongjie Shao

The case concerns a dispute between a seller (respondent) from Hong Kong, and a buyer and its agent (claimants), both from China. The contract goods were ink cartridges that the claimants alleged to be defective.

The Arbitral Tribunal ruled that Chinese domestic law should apply to the contract. The tribunal made reference to the product quality law of the People's Republic of China and Article 36 CISG as an international trade usage commonly adopted. The Tribunal recognized that the goods had severe defects and could not be used as a commodity, therefore pursuant to the Chinese product quality law and the CISG, the claimant had the right to return them, and the seller was condemned to refund them accordingly. Damages were also awarded.

**Case 804: CISG 8; 35; 49 (1)(a); 84**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]  
19 January 2000  
Original in Chinese  
Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui  
Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004)  
2000 vol., pp. 1222-1231  
Published in English: <http://cisgw3.law.pace.edu/cases/000119c1.html>  
Abstract prepared by Indira Satarkulova

A Chinese company and a firm from New Zealand entered into a contract for the purchase and sale of high-pressure compressed natural gas delivery steel cylinders. When the shipment arrived at the port of destination, the buyer requested an inspection which concluded that there was no conformity with the goods mentioned in the contract. The buyer contacted the seller several times to declare contract avoidance, and requested return of the goods and refund of the purchase price by the seller. After several unsuccessful attempts, the buyer applied for arbitration.

The contract did not contain any applicable law clause, but the arbitration clause stated that arbitration was to be held in China. Thus Chinese law would apply. Furthermore, since both parties had their place of business in contracting states of the CISG, the Convention would also apply. The Arbitral Tribunal ruled that the delivery of non-conforming goods by the seller amounted to a breach of contract. According to the inspection report produced by the buyer, the documents provided by the seller were not related to the goods. The Arbitral Tribunal accepted this conclusion. Moreover, it ruled that the buyer's payment under the letter of credit ("L/C") did not mean the seller had fully performed all the obligations under the contract. When the beneficiary, i.e. the seller, provides the issuing bank the

documents required in the L/C, even though the seller has not performed its contractual obligations, the bank cannot refuse the payment. Thus, the Tribunal concluded that the seller had fundamentally breached the contract and, according to Article 49 (1) (a) CISG, the buyer was entitled to declare the contract avoided. The Tribunal stated that the buyer could return the goods and the seller should collect them from the buyer and bear the cost. The seller should also refund the buyer the price of the goods with interest.

**Case 805: CISG 8; 25; 74; 77; 78**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

31 December 1999

Original in Chinese

Published in Chinese: Zhongguo Guoji Jingji Maoyi Zhongcai Caijueshu Xuanbian [Selected Compilation of Awards of CIETAC] (1995-2002), Law Press, pp. 410-421

Published in English: <http://cisgw3.law.pace.edu/cases/991231c1.html>

Abstract prepared by John Zhu

A Chinese seller and a Swiss buyer entered into a contract for the sale of prime hot rolled steel sheets in coil in China. The standard form of contract included a clause on the terms of payment which was replaced by the parties with new terms of payment, typed on the form. However, the original and pre-printed provision of the contract standard form was only partially deleted.

In order to perform the contract, the seller concluded a separate supply contract and a shipping contract. Because of the different understanding of the payment clause in the purchase contract, the buyer did not apply for issuance of the L/C as stated by the contract. Eventually, the seller cancelled its order of goods from its supplier and the shipping order. It then filed for arbitration claiming damages for loss of profit, contract cancellation fees, other expenses incurred and interest.

The parties had not chosen any governing law in their contract. However, since their places of business were in Contracting States of the CISG, and both acknowledged in their arguments that the CISG should be the applicable law, the Arbitral Tribunal ruled for the application of the Convention.

The Tribunal held that where the parties adopt a standard form contract for their transaction but negotiate and reach a special agreement on specific issues, the individually negotiated terms shall prevail over the original terms in the standard form contract. The Tribunal also stated that, since the payment provisions in the original pre-printed form contract (both in English and in Chinese) failed to convey a full meaning, the pre-printed payment clause was to be considered as completely replaced by the new payment clause typed on the form as per the agreement between the seller and the buyer.

The Tribunal recognized that the timely issuance of the L/C was of the essence for the contract and that, since the buyer had failed to request the issuing bank to issue the L/C in accordance with the typed-in payment clause, this constituted a fundamental breach of contract. Accordingly, the buyer should compensate the seller for the loss of profit, the fees paid because of cancellation of the supply and shipping orders, and the other expenses incurred due to the buyer's breach of contract. The Tribunal further stated that there was no evidence that the seller had clearly informed the buyer of its loss prior to filing for arbitration and concluded

that, therefore, while the buyer should pay interest on the above, the interest should only be calculated from the date of filing for arbitration.

The Tribunal, however, did not support the buyer's argument that the seller had not taken reasonable efforts to mitigate the loss and that the buyer could not reasonably foresee the loss or that the loss exceeded the amount the buyer foresaw or ought to have foreseen at the time when the contract was concluded. In the Tribunal's view the buyer had failed to provide sufficient evidence to prove this argument.

**Case 806: CISG 35; 48 (2); 86 (1)**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

29 December 1999

Original in Chinese

Published in Chinese: <http://cisgw3.law.pace.edu/cisg/text/991229c1chinese.html>

Published in English: <http://cisgw3.law.pace.edu/cases/991229c1.html>

Abstract prepared by John Zhu

The buyer and the seller entered into a contract for the purchase of Indonesian Merbau round logs. The contract provided a clear and detailed description of the specifications of the goods. The buyer paid the price through a letter of credit as required by the contract. Upon arrival of the goods at the destination port, the buyer had them inspected. However, the inspection discovered that the quantity, specification, volume and quality of the goods were not conforming with the contract and concluded that the shortage of volume resulted from inaccurate measurement before shipment, and that severe quality defects existed at the time of the shipment.

Following the inspection, the buyer sent a statement of claims to the seller alleging shortage of quantity and volume and quality defects. The seller sent two experts for a second inspection of the goods in order to verify whether the inspection certificate truly reflected the condition of the goods. Based on the data collected by its experts, the seller considered that the goods were in compliance with the contract. It then informed the buyer that it was ready to accept the rejection of the goods and to return the payment received. While the parties were still discussing over the circumstances of the goods the buyer disposed of them. Despite the proposal of the seller, it also sold some of the goods without even replying to the seller's proposal. Later on, the buyer filed for arbitration alleging shortage and defects of goods and claiming damages, arbitration fee and other costs incurred.

As the parties had not chosen the applicable law to their contract, the Arbitral Tribunal held that, according to the Chinese Law on Economic Contracts Involving Foreign Interest, Chinese law should be applied since the place of contracting and the place of performance of the contract were in China. Moreover, the Tribunal also held that since the places of business of the parties were in two Contracting States of the CISG, and the parties had not opted out of the CISG, the Convention should also apply.

After examining the facts, the Arbitral Tribunal held that the buyer had acted properly and reasonably under the contract in promptly having the goods inspected after their arrival at the port of destination and immediately informing the seller of the inspection result. However, the buyer should be held liable for not responding to the seller's fax. Furthermore, the buyer, prior to giving any reply to the seller, had

unilaterally disposed of a large portion of the logs. This measure not only violated the relevant provision of Article 86 (1) CISG, but was also contrary to international practices. Therefore, the buyer should be deemed as having accepted the goods and waived the right to claim for damages. All claims raised by the buyer were dismissed accordingly.

**Case 807: CISG 9; 18; 19; 76 (1)**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

30 June 1999

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1999 vol., pp. 2127-2133

Published in English: <http://cisgw3.law.pace.edu/cases/990630c1.html>

Abstract prepared by John Zhu

A Chinese seller faxed to a British buyer a contract document for the sale of two containers of peppermint oil. In order to confirm its agreement, the buyer sent back to the seller its standard purchase confirmation form, which listed all of the main clauses of the seller's contract document. However, the seller complained that the buyer's confirmation form was too complicated and asked the buyer to sign and send back the contract document it had originally sent. The buyer complied with this request and faxed the document back to the seller.

Since the market price of the goods kept rising, the seller then requested the buyer to negotiate a price increase of the goods. After the first container of oil was delivered at the original price, therefore, the buyer and the seller entered into an oral agreement to increase the price of the remaining peppermint oil. The seller sent a fax to the buyer to confirm this agreement. However, later on the seller terminated this new agreement, still due to market fluctuation, and refused to deliver the remaining goods. The buyer filed for arbitration.

Since the parties had not stipulated any provision on the law applicable to the contract, the Arbitral Tribunal held that the law of the country with the closest relationship with the contract should apply, i.e. the Chinese Law on Economic Contracts Involving Foreign Interest. According to that law, for any matter not covered by it, international practice should be applied: therefore the CISG was applicable.

The Tribunal held that a valid contract had been concluded between the parties. It thus rejected the seller's allegation that the buyer had signed the seller's contract document only for the purpose of the arbitration due to lack of sufficient evidence. The contract document sent by the seller and duly signed by the buyer was binding and effective on both parties. Therefore, whether or not the seller had accepted the buyer's standard confirmation form did not affect the validity of the contract. The Tribunal further stated that since both parties had initiated performance of their respective obligations after the conclusion of the contract, this amounted to additional evidence that the contract had been duly formed.

Therefore, since the seller had performed only part of its obligation to deliver the goods, this constituted a breach of contract. According to Chinese Law, thus, the buyer was entitled to claim damages, price difference and loss of interest. In order

to determine the price difference, Article 76 (1) CISG should apply. Pursuant to that article, the Tribunal considered that the price difference for the goods in default was to be calculated with reference to the difference between the contract price and the current price at the time of taking over of the partial delivery. In order to determine this price difference, since neither the seller nor the buyer had submitted the current market price to the Tribunal, the Tribunal held that it was reasonable to regard as the current price the new price agreed by the parties when they renegotiated the original agreement. As to the loss of interest, the Tribunal held that, according to Chinese Law, the buyer was entitled to interest.

**Case 808: CISG 7; 25; 26; 34; 49; 64; 74; 75; 77; 78**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

4 June 1999

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1999 vol., pp. 2051-2055

Published in English: <http://cisgw3.law.pace.edu/cases/990604c1.html>

Abstract prepared by MAA-Jean Ho

A Chinese seller and an American buyer entered into a contract for the sale of industrial raw materials in April 1998. The buyer was requested to make payment by letter of credit ("L/C"). After the goods were shipped, the seller submitted the L/C to the paying bank but the L/C could not be honoured because the dates in the L/C and the bill of lading (B/L) did not correspond (the seller's carrier had written "1999" instead of "1998" in the B/L). The seller urged the buyer to redeem the B/L and pay the contract price. The buyer requested the seller to reduce the contract price on the basis that the disparity in dates was due to the seller's oversight. The seller refused and the buyer, in turn, did not take delivery of the goods or make payment. Eventually, the seller sold the goods to another company incurring a loss. It then commenced arbitration proceedings against the buyer claiming, among others, damages (Articles 74 and 75 CISG) and interest until the day payment is made by the buyer (Article 78 CISG).

The buyer argued that since the seller had submitted a document containing an error, the documents were not handed over to the buyer in the manner envisaged in Article 34 CISG, and that constituted a fundamental breach of contract. The seller's reselling of the goods without notifying the buyer amounted to unilateral avoidance of the contract and was also a fundamental breach. Finally, the buyer argued that its request to reduce the price of the goods was reasonable since the disparity in dates in the B/L and L/C would cause it to incur additional expenses if it wanted to resell the goods using the very same documents.

The Arbitral Tribunal rejected the buyer's arguments because not every instance of non-conformity in documents amounts to a fundamental breach of contract. In the present case, it was obvious that the error in question was merely typographical and the buyer should have acted in good faith and accepted delivery of the goods (Articles 7 and 25 CISG). Moreover, the buyer had no right to request a reduction in price because the typographical error in the B/L was not a barrier to reselling the goods. As the buyer had not manifested any intention to accept the goods within a reasonable time, this constituted an abandonment of contract and the seller was

entitled to resell the goods without sending the buyer a written notice of avoidance of the contract.

Therefore, the tribunal upheld the seller's claims.

**Case 809: CISG 38 (3); 39 (1); 35**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

20 April 1999

Original in Chinese

Published in Chinese: Zhong Guo Guo Ji Jing Ji Mao Yi Zhong Cai Wei Yuan Hui Cai Jue Shu Hui Bian [Compilation of CIETAC Arbitration Awards] (May 2004) 1999 vol., pp. 1873-1885

Published in English: <http://cisgw3.law.pace.edu/cases/990420c1.html>

Abstract prepared by Meihua Xu

A Chinese buyer entered into a contract with a Taiwanese seller for the purchase of seven items of chemical cleaning product equipment.

The equipment was sold with a warranty that would be valid for twelve months after the arrival at the destination port, but for no longer than eighteen months from the date of making the goods ready for shipment. The inspection clause obligated the buyer to have the goods inspected after they reached the destination port.

Disputes arose during the performance of the contract on some of the machines delivered, thus the buyer initiated arbitration proceedings. The buyer asked to return some of the items and a price reduction for others; it also requested the seller to return the price and compensation for loss of interest and loss of profit.

The buyer asserted that there was a lack of conformity with the goods description in the contract. The defects, discovered after the inspection of the goods, included different place of manufacturing the goods, lack of technical components, components with different specifications than those described in the contract, components installed in a different way than shown in the product introduction and defective set-up.

The seller defended that some technical components could be installed on the machines only upon specific request of the buyer, since they were quite special. Furthermore, even if they were installed, that would not change the performance of the machines. Other pieces of equipment were in normal condition and the buyer had been unable to produce a conforming product because of some material the buyer used, different from the one chosen by the parties. Finally, the seller argued that one inspection certificate submitted by the buyer had been issued beyond the deadline required by the contract and the buyer had lost its right to claim damages in accordance with Article 39 (1) CISG.

The parties had not stipulated the applicable law in the contract. However, at the hearing, they explicitly agreed to apply Chinese law to resolve the dispute. Where there was no applicable provision in the law, the CISG should be applied. The Arbitral Tribunal upheld this decision.

With regard to the buyer's claim of non-conformity of the goods, the Tribunal noted that in two cases, although the claims were beyond the deadline stipulated in the contract, they had been raised within the warranty period. The machines were installed and tested after they had been delivered to their final destination. In



accordance with Article 38 (3) CISG, the Tribunal held that the seller knew that the two machines would be redirected to another site and that since this was a quite large piece of equipment, it was reasonable for the buyer to take the inspection at the final destination.

In one case, there was no indication on the contract of the place where the item had been manufactured. The product manual provided by the seller indicated that the machine was made in Italy, but the machine actually delivered was made in Taiwan. The Tribunal noted that there was no evidence that the buyer would ever accept a machine made in Taiwan. It further held that goods provided by the seller should be consistent with the product manual, and not produced by it and priced as the product originally produced by the Italian manufacturer. The Tribunal also noted that the machine could not work normally with the set-up delivered by the seller. As for the specific request of the buyer to have certain features installed on the machine, the Tribunal deemed that the seller should have stated in the contract that such an installation required extra expenses, otherwise, it was reasonable for the buyer to rely on the product manual provided by the seller and request to install the features. Therefore the seller had breached the contract for failing to perform accordingly.

With regard to another machine with a defective set-up, which could not produce goods conforming to the contract, the Tribunal ruled that the defective/missing components were in fact a necessary installation that should be provided by the seller. The Tribunal also noted that this machine had some quality defects which affected the normal use by the buyer.

Finally, the Tribunal noted that in one case, the buyer had delayed inspection with no reason and that its claims had far exceeded the deadline stipulated in the contract and were also beyond the 18-month period of the warranty. Therefore, the Tribunal concluded that the buyer had lost its right to claim deficiencies in this installation and denied the claim for loss of profit.

As for the other items, the Tribunal upheld the buyer's claim for price reduction and interests.

**Case 810: CISG 25; 26; 30; 35 (2)(c); 64; 74; 76; 77**

PRC: China International Economic & Trade Arbitration Commission [CIETAC]

8 April 1999

Original in Chinese

Published: <http://cisgw3.law.pace.edu/cases/990408cl.html>

Abstract prepared by Aaron Bogatin

Four contracts were concluded between a New Zealand seller and a Chinese buyer. The contracts, concluded through the agent of the seller, concerned the delivery of wool and required payment by letter of credit ("L/C") issued by the buyer 180 days from the bill of lading (B/L).

Despite several reminders of the seller's agent, the buyer never issued the L/C. In order to mitigate any future losses, therefore, the seller resold the goods to a third party [Article 77 CISG]. It then sued the buyer arguing that the buyer's failure to provide the L/C was a fundamental breach of contract [Article 25 CISG] and requested, among others, damages for the difference in contract pricing [Article 75 CISG], loss of interest and storage charge.

In its defence, the buyer asserted that it did not issue the L/C because, contrary to the General Trading Terms of the sector, the seller had not provided samples of the wool after the contracts had been concluded. This was a seller's obligation unless the buyer did not require it. Furthermore, the seller had not notified the buyer that the goods were ready for shipment, which was required for the L/C to be issued. If no issuance time is stated, the time of issuance shall be set at after the B/L [Article 58 CISG]. Since the B/L had not been given to the buyer, the L/C could not be issued. With regard to reselling the goods, the seller never received confirmation that the buyer was not going to perform. Therefore under Article 63 (2) CISG the seller had no right to resort to any remedy for breach of contract. Finally, there were no documents confirming the agency agreement between the agent and the seller; thus the seller never actually informed the buyer of the requirement to issue the L/C, and of the issuance time, place and bank.

Although the contract was silent as to governing law, both parties had their places of business in countries that had adopted the CISG, therefore the Arbitral Tribunal deemed the CISG applicable. If the CISG were silent on a pivotal issue, then the laws and regulations of China would be referred to. If neither could resolve the dispute, international practices would be applied.

The Arbitral Tribunal held that the buyer failed to fulfil the basic requirement of all four contracts, i.e. issuing the B/L within a specified period of time, and that its arguments for not issuing the L/C, i.e. lack of samples provided by the seller, were not a valid reason. The correct interpretation was that a sample is only required if requested [Article 35 (2) (c) CISG].

The Tribunal also noted that though the CISG requires the seller to deliver the goods, hand over the relevant documents and transfer the property in the goods [Article 30 CISG], it does not require the seller to notify the buyer of these activities. Therefore, in this specific case the seller's behaviour was not a breach of contract and in any case it could not excuse not issuing the L/C.

As for issuing the L/C, ignorance of the relevant information for the L/C could not be argued as the four contracts listed considerable information about the seller. Failure to provide the L/C thus amounted to a non-performance of the contract and a fundamental breach [Article 25 CISG].

As to the position of the agent, there is no provision under Chinese law, international custom or the CISG that dictates the existence of an introducer to a contract. Therefore, it is up to the will of the parties. Since the buyer interacted with the seller's agent until the arbitration proceeding, and until then never questioned its relationship with the seller, the buyer could not claim it was unaware of the relationship.

The Tribunal thus recognized the seller's right to avoid the contract [Article 64 CISG]; however, it noted that the seller had resold the goods prior to the declaration of avoidance [Article 26 CISG]. This was to be considered a seller's failure, though, given the specific circumstances of the case, the seller should have known that the buyer had no intention to perform the contracts. However, since the buyer had already breached the contract, the buyer had lost the right to "blame" the seller.

Therefore the Tribunal upheld the seller's requests. It only denied the seller's claim for loss of interest on the resale price difference, since the seller had resold the goods prior to the declaration of avoidance.

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