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## United Nations Commission on International Trade Law

### CASE LAW ON UNCITRAL TEXTS (CLOUT)

#### United Nations Convention on Contracts for the International Sale of Goods

##### Case 2188:<sup>1</sup> CISG 1(1)(a); 45(1)(b); 74

Spain: Madrid International Arbitration Centre

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Original in English

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The dispute between a Russian buyer and a Spanish seller, the seat of the arbitration being in Madrid, arose from the conclusion of two contracts for the supply of goods in accordance with which the seller (the defendant) was to deliver a specific quantity of soccer goals to the buyer (the claimant). In order to define the terms of delivery of the goods, the parties agreed to apply the Incoterms 2010 EXW ("Ex works"). The place of delivery of the goods was to be Jinhua, China, and delivery was to be made within eight weeks of the payment of 100 per cent of the price of the goods.

The claimant made payments to the defendant as agreed in the contracts. However, the claimant claimed that it had not received notice from the defendant that the goods were available for delivery. Thus, according to the claimant, the seller was in breach of contract and should pay damages. The defendant, for its part, alleged that it was the claimant that had failed to comply with its obligation to take delivery of the goods at the agreed place, as established in the contract between the parties. Furthermore, it argued that the claimant had failed to prove that the goods had not been available for collection as per the terms of the contract.

The tribunal determined that the Incoterm EXW establishes the seller's obligation to notify the buyer once the goods are available for delivery. It therefore determined that there had been a breach of contract, and proceeded to analyse the claimant's claims for compensation. In doing so, it pointed out that neither the terms of the contracts nor the Incoterms 2010 EXW provided for remedies applicable in the event of a breach of contract.

Accordingly, it went on to analyse the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). In application of article 1(1)(a) of the CISG, the tribunal determined that the Convention was applicable, as both parties were domiciled in contracting States, and the contracts concluded did not exclude its application.

<sup>1</sup> Abstract also available at [www.cisgspanish.com/](http://www.cisgspanish.com/).



On that basis, article 45(1)(b) of the CISG, concerning the buyer's right to claim damages in the event of a breach by the seller of its obligations, applied. Moreover, in accordance with article 74 of the Convention, the damages due to the buyer as a result of the seller's breach should consist of a sum equal to the loss suffered. The tribunal determined that the loss suffered by the claimant was the price paid for the totality of the goods, and that that party's claim for reimbursement of the price paid was therefore admissible.

Finally, the arbitral tribunal decided to reject the claimant's request for the payment of interest on the damages awarded. In justification of that decision, the tribunal pointed out that the claimant had not given reasons why it should receive interest, and that neither the contracts between the parties nor the CISG contained provisions regarding the applicable interest rate. Given those circumstances, the tribunal concluded that it was more appropriate to reject the request for interest, in exercise of the broad discretion granted to arbitrators in that regard.

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