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CASE LAW ON UNCITRAL TEXTS (CLOUT)

United Nations Convention on Contracts for the International Sale of Goods (CISG)

Case 2200: CISG 4; 14; 18; 23; 29; 30; 45; 74; 80

People's Republic of China: Intermediate People's Court of Foshan City, Guangdong Province

Case No. (2012) Fo Zhong Fa Min Si Chu Zi, Nos. 4 and 64

Guangdong Aomei Aluminium Co. Ltd. v. INDECO S.A. (Poland)

13 December 2016

Original in Chinese

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This case involves an order of performance and liability for breach of contract in an international sale of goods. On 10 August 2006 and 10 June 2010, Indeco S.A. Poland (the buyer) and Guangdong Aomei Aluminum Co., Ltd. (the seller) signed two aluminum profile supply contracts, in which the seller sold aluminum alloy extrusion profiles to the buyer. On 21 October 2010, the two parties held a coordination meeting and the buyer agreed to terminate the contract signed on 10 June 2010, temporarily suspend the partnership between the two parties and cancel an order of approximately 90 tons of goods that had been placed with the seller in connection with the aforementioned contract. On 19 December 2011, the buyer sued the seller for avoidance of the aluminum profile supply contracts and claimed compensation for damages from the seller. On 19 March 2012, the seller in turn countersued the buyer, demanding compensation for the processing fees of the aluminum profiles, losses from the remelting of the aluminum profiles and payment for goods already received but not paid for.

The Intermediate People's Court of Foshan City ruled that, according to the provisions of CISG and the terms of the contract, the seller was bound to fulfil the obligation to supply first, and the buyer should make payment to the seller once the conditions for payment were met. The seller's failure to perform the primary obligation of supplying the goods constituted a breach of contract. After the parties agreed to terminate the contract, the buyer could not claim damages from the seller by invoking the grounds that the contract was invalid owing to a fundamental breach. But the buyer could claim compensation for failure to fulfil the contract. Therefore, the seller was ordered to compensate the buyer for the loss of profits, mould costs and legal service fees and



to refund the security deposit; and the buyer had to pay the seller for the goods received.

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