

CISG-online 4116	
Jurisdiction	China
Tribunal	Intermediate People's Court Jinhua, Zhejiang Province
Date of the decision	9 November 2018
Case no./docket no.	(2018) Zhe 07 Min Zhong No. 5356
Case name	<i>P.H. "PODLASIAK" Andrzej Cylwik v. Yiwu Entuo Import and Export Firm</i>

### Abstract

*by Shu Zhang\* & Peng Guo\*\**

This decision followed the appeal brought by the buyer against the judgment by the People's Court Yiwu, Zhejiang Province, 31 August 2018, CISG-online 4114. The court dealt with the same question as in the case of first instance, whether the defendant and appellee, Pinfirst Import & Export Firm, was the counterparty to the sale of goods contract and the correct defendant in this contractual dispute.

The Polish party (buyer, plaintiff in the case of first instance, and appellant) traded with a Chinese party with the name of 'Pinfirst Import & Export Co Ltd' ('Pinfirst Company'). It then brought a claim to 'Pinfirst Import & Export Firm' ('Pinfirst Firm') regarding the contract, because the Pinfirst Company was not registered in China, while there were some evidence proving the connection between the Pinfirst Company and the Pinfirst Firm. The lower court decided against the Polish party.

Although no challenge was made on the applicable law by the appeal, the court held that the court of first instance should have considered the applicability of CISG. It held that the dispute arose from a contract for an international sale of goods and the parties were from two Contracting States of the CISG. Thus, in the absence of an express choice of law, the CISG should prevail. However, given the fact that both parties were referring to the (non-harmonised) Chinese law in the case of first instance, and no objections were made with regard to the applicable law, this behaviour could be interpreted to represent an implicit choice of law by the parties regarding this foreign-related civil relationship. Thus, the court maintained the lower court's decision in applying Chinese law while correcting its legal reasoning. The court also maintained the decision to reject the plaintiff/appellant's claims on factual basis.

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