

Case 103: CISG 1(1)(b); 35; 36; 78; 84

International Chamber of Commerce, International Court of Arbitration

Arbitral award issued in 1993, case no. 6653

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(Abstract prepared by S. Picard, ICC International Court of Arbitration)

The parties concluded a contract for the sale of goods. The buyer contested the conformity of the goods to the contract specifications.

The arbitral tribunal applied the CISG on the grounds that: the parties had chosen French law as applicable law and the Convention was in force in France at the time the contract was concluded; the contract concerned international trade interests because its performance assumed a movement of goods and payments across frontiers; and the goods concerned fell within the scope of application of the CISG. The tribunal also noted that the buyer was located in Syria, which was a party to the Convention at the time the contract was concluded and that the seller was located in Germany which became a party to the Convention after the time of the conclusion of the contract.

The tribunal considered the question of which party had the burden of establishing the lack of conformity, a question that was not addressed in the CISG, and found that, pursuant to article 1315 of the French Civil Code and general principles of international trade, the party invoking a lack of conformity should have to prove it.

The tribunal found that some of the goods did not conform to the contract and ordered reimbursement of the buyer for the sums paid for these goods. As the seller was regarded as having been very cooperative at the time the difficulties arose, the tribunal left to the seller the choice of either removing the non-conforming goods at its own expense or abandoning them on site.

The tribunal awarded the buyer interest, although it was found that article 84 CISG was somewhat ambiguous as to whether interest was payable if it had not been requested, in view of the fact that article 1153-1 of the French Civil Code prescribed it in any case. As CISG does not specify how the applicable interest rate is to be determined, the tribunal applied the rate commonly applied to Eurodollar settlements between operators in international trade, i.e., the one-year London Inter-Bank Offered Rate (LIBOR).