

Case 303: CISG 8; 39(1); 44; 50; 77; 78

International Chamber of Commerce, International Court of Arbitration; 7331

Arbitral award issued in 1994

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Abstract published in Italian: [1996] Diritto del Commercio Internazionale, No. 111, 637

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Uniform Law for International Sales, 285; Koneru [1997] Minnesota Journal of Global Trade, No. 6, 123; Goderre in [1997] University of Cincinnati Law Review 277

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(Abstract prepared by the Secretariat)

A Yugoslav seller, plaintiff, sold cow hides (supplied by a Russian entity ("RE") as a payment to the seller for the reconstruction of a factory in Russia) to an Italian buyer, defendant. The buyer did not report to the seller defects discovered upon inspection, but instead requested a price reduction based on the depressed market for hides. The seller refused to reduce the price and the buyer withheld payment. The seller, the buyer and the RE met in Moscow and signed a protocol (the "Protocol") establishing the total amount of the buyer's outstanding debt and providing the buyer with a 30-day postponement of payment of the debt, during which time RE was to inspect the hides in Italy. When RE failed to inspect the hides, the buyer informed the seller that it no longer had any debt to it. Subsequently, the buyer sold the hides without specifying the amount obtained.

As the contract contained no choice of law provision, the arbitral tribunal held the CISG to be applicable to the contract according to article 13 (3) of the ICC Rules.

The arbitral tribunal found that the Protocol had not released the buyer of its obligations under its contract with the seller. Against the background of the CISG's silence on the issue of novation, the arbitral tribunal did not consider solely one national law, but it applied the common core requirements as a general legal standard derived from the three relevant national laws (Italy, France and former Yugoslavia). On the basis of article 8 CISG, the arbitral tribunal concluded that under the terms of the Protocol, the seller had not intended to release the buyer from its obligations and that the buyer had no reasonable basis upon which to assume that this had been the seller's intent.

The arbitral tribunal held that due to the buyer's failure to give notice to the seller of the lack of conformity of the goods according to article 39 (1) CISG, the buyer was not entitled to rely on lack of conformity. Furthermore, given the buyer's lack of a reasonable excuse for its failure to give the required notice, a price reduction according to articles 44, 50 CISG was not justifiable. The arbitral tribunal pointed out that, even if the buyer had timely given notice, it would have been in breach of its obligation to mitigate damages under article 77 CISG. In this respect the arbitral tribunal noted that the buyer had sold the hides without providing evidence that such hides were sold at a loss due to their

The arbitral tribunal also held that the seller was entitled to receive interest on the principal amount awarded according to article 78 CISG from the time of the filing of the request for arbitration. The interest was to be determined according to the law of the country in which the damage resulting from the delayed payment was suffered: in this case, the seller's country.