

Case 304: CISG 1(1)(a); 25; 35(1); 35(2); 49(1)(a); 51(2); 74; 75; 86; 87; 88(1)

International Chamber of Commerce, International Court of Arbitration; 7531

Arbitral Award issued in 1994

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Abstract published in Italian: [1996] Diritto del Commercio Internazionale, No. 109, 636

Commented on in English by Koneru [1997] Minnesota Journal of Global International Trade, No. 6,105

Commented on in Spanish by Perales in [1996] Cuadernos Jurídicos 3, No. 43, 5

(Abstract prepared by the Secretariat)

A Chinese seller, defendant, sold scaffold fittings to an Austrian buyer, plaintiff. The buyer claimed lack of conformity of the goods and declared the contract avoided. Subsequently, the buyer sold the goods and sued the seller for damages, as such goods had been sold only partially and at a lower price.

The arbitral tribunal determined the CISG to be applicable to the contract in accordance with article 1(1)(a) CISG).

The arbitral tribunal allowed the buyer's claim. It held that the seller had not delivered the goods in accordance with article 35(1), (2) CISG and that the lack of conformity of an important part of the delivered goods amounted to a breach of contract by the seller which, under article 25 CISG, was fundamental since the buyer had been deprived of substantially what it was entitled to expect under the contract. In view thereof, the arbitral tribunal found that the buyer was entitled to rely on articles 49(1)(a) CISG and 51(2) CISG for declaring the contract avoided, and that the seller was not entitled to supply substitute items after the delivery date specified in the contract without consent of the buyer.

Citing articles 86 CISG, 87 CISG and 88(1) CISG, the arbitral tribunal allowed as damages costs, expenses and losses related to the buyer's reasonable expenses for preservation of the goods. In addition, under articles 74 CISG and 75 CISG, the arbitral tribunal allowed all damages (except one, the travel costs of the buyer's customer) claimed by the buyer. The buyer's claim of cost of credit was held to be an element of the damages due according to article 74 CISG.

The arbitral tribunal further held that as the CISG was silent on the question of the maturity date of damage claims and taking into account that this element of the claim was undisputed, the buyer was entitled to receive interest from the date it communicated the amount of its claim to the seller by telex.