**Case 839: CISG 2; 3; 7; 8; 30; 74; 77; 79**
France: Court of Cassation – First Civil Division, Appeal No. Y 01-15964;
Judgement No. 1136 FS-P
Société B … v. Société R … AG
30 June 2004
Original in French
Available in *Bulletin civil*, 2004, I, No. 192; http://www.cisg-france.org/decisions/041005.htm; Légifrance: http://www.legifrance.gouv.fr; *Revue trimestrielle de droit civil*, 2004, pp. 845-849, particularly p. 847, obs. Philippe Delebecque; www.dalloz.fr, under Actualité, obs. E. Chevrier; obs. Isabelle Rueda, in Chronique "Droit International et Européen" (Juris Classeur Périodique, Edition Générale), 2005, I, 110, p. 208; *Revue des contrats*, 2005, p. 456, note Pascale Deumier; "Sources internationales", *Revue trimestrielle de droit civil*, 2005, p. 335 et seq., particularly pp. 354-357, Pauline Remy-Corlay; *Internationales HandelsRecht*, 2005, pp. 147-151, Florian Schumacher; *Droit uniforme de la vente internationale de marchandises* (Dalloz 2005); Panorama 2004, p. 2281, particularly 2289, obs. Claude Witz
Abstract prepared by Claude Witz, National Correspondent, and Mathieu Richard

The case involved a Swiss company, a spare parts manufacturer, and a French company subcontracted to a French truck manufacturer. Under an agreement dated 26 April 1991, the Swiss company was to supply the French subcontractor with polyurethane foam casings for air conditioners exclusively manufactured for the truck manufacturer. The contract stipulated that "at least 20,000 units over a period of eight years" should be supplied, according to the needs of the truck manufacturer, which were projected to be 3,000 to 6,000 units per year. The sum to be paid by the French company was fixed in accordance with the number of casings supplied each year. On 6 December 1996, the French company informed the Swiss party that, owing to a radical change in the truck manufacturer's terms of purchase, it would no longer be using the spare parts. The Swiss company claimed damages for harm resulting from the premature termination of the contract, particularly in view of the investments that it had made to meet the order. The Colmar Court of Major Jurisdiction dismissed the claim in a judgement of 18 December 1997. The Colmar Appeal Court set aside that decision in a judgement of 12 June 2001 (CLOUT case 480), deeming that the subcontractor had breached its contractual obligations and should pay damages in accordance with CISG articles 74 and 77. It was not permitted to invoke CISG article 79.

The First Civil Division dismissed the French buyer's appeal, stating, first, that the Appeal Court had, in interpreting the elements of proof laid before it in accordance with the principles set out in CISG article 8, including the provision whereby contracts were to be interpreted in good faith, rightly concluded from the agreement that it contained reciprocal obligations of supplying and purchasing specified goods at an agreed price. The Court of Cassation held that the Appeal Court had thus considered the agreement in the context of CISG, without having to set out expressly the manufacturer's obligation to supply the goods. The Court of Cassation thus deemed that the Appeal Court had legally justified its decision in accordance with CISG articles 2, 3, 7, 8 and 30.

Secondly, it declared inadmissible, as containing new evidence, the argument that the agreement between the buyer and the manufacturer was an integral part of the agreements between the buyer and the truck manufacturer.

Lastly, it considered the Appeal Court's ruling that, despite the change in the terms of purchase for the buyer, the latter should, as a professional well-versed in international commercial practice, had stipulated that the contract should contain guarantee or review mechanisms. The Court of Cassation held that the Appeal Court had rightly concluded that, failing such provisions, the buyer should have assumed the risk of non-performance and could therefore not invoke CISG article 79.