

Case 887: CISG 1(1)(b); 6; 25; 49(1)(a); [74]

Switzerland: Appellationsgericht des Kantons Basel-Stadt (Court of Appeal of the Canton of Basel-Stadt); 33/2002/SAS/so

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<http://www.globalsaleslaw.com/content/api/cisg/urteile/943.pdf>

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A Swiss company bought food-shaper products for making vegetarian escalopes from a Belgian supplier with a view to their exclusive resale to a producer company. It subsequently terminated the contract since the goods contained, contrary to a contractual warranty, genetically modified organisms (GMOs), and sought damages before the lower court.

The Court of Appeal of the Canton of Basel-Stadt, ruling on the dispute as the higher court, held that the CISG was applicable in accordance with its article 1 (1) (b). It did not view the choice of Swiss law by the parties as excluding the application of the CISG within the meaning of article 6. Any such exclusion would have had to be expressly agreed.

The court reaffirmed the existence of a fundamental breach of contract within the meaning of article 25 CISG. It concluded that the buyer had the right to declare the contract avoided in accordance with article 49 (1) (a) CISG and was entitled to claim damages. In spite of the contractual warranty concerning the absence of GMOs, a clause in the contract limiting the seller's liability for product defects to the total invoiced value was deemed admissible within the meaning of article 6 CISG.

The seller objected that only samples of the goods had been taken, which did not prove that all the goods were defective. The court did not uphold that objection, ruling that the buyer had the right to terminate the contract in its entirety and that the buyer's claim for damages should be determined on that basis.