

Case 1118: CISG [1(1)(a); 4; 7]; 8; [9]

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenzhen Commission (now South China Branch)

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Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/051207c1.html>

Abstract prepared by Panfeng Fu

A Chinese buyer and a German seller signed a contract for the purchase of electrical warm-air heaters and other products. The goods were to be delivered c.i.f. During the performance of the contract, the buyer asked to return the goods under the clauses for the return of goods in the contract. However, the parties did not reach an agreement on such return. The buyer then initiated arbitration proceedings, asking the Arbitration Tribunal to order the seller to accept the returned goods promptly, refund the money paid, pay a penalty for delaying the refund of the sum paid, and accept responsibility for the import duty related to the goods, storage charges and other fees.

The parties had not made any provision in the contract regarding the law by which disputes would be governed. Since the places of business of the parties were in States Parties to CISG, the Tribunal ruled that the case should be governed first and foremost by the Convention. For matters not provided for in the Convention, the Tribunal held that, according to the principle of the closest connection, the domestic law of China should be applied.

The Tribunal held that the request by the buyer to return the goods was in line with the provisions of the clauses on the return of goods in the contract, which should be upheld. In accordance with these clauses, the seller should refund the money on the basis of the contract price, and be responsible for import duty and other relevant costs. However, the parties had different understandings of what was meant by "contract price". The difference mainly concerned whether the "contract price" should include freight. The Tribunal held that, under article 8 of the Convention, if the parties had different understandings of the term "contract price" all relevant circumstances should be taken into consideration to determine their intention; or the interpretation that a reasonable person would arrive at should be adopted. For this reason, the Tribunal held that the refund should be calculated at the unit price of each and every model among the goods returned. This was the way the buyer had calculated the price to be refunded in a letter sent to the seller, therefore "a reasonable person of the same kind as the seller would have understood the 'contract price'" in such a way.

With regard to the responsibility for the delay in returning the goods, the Tribunal, pursuant to PRC Contract Law, held that when the method of performance was not clearly described in the contract, the parties should abide by the principle of good faith and reach an agreement in accordance with the provisions of the contract or the relevant usages. In the case at hand the behaviour of the seller had been inconsistent with the principles of honesty and credibility and the requirement that the contract was to be honoured in good faith (article 7 CISG). The seller had therefore breached the contract by violating the clauses concerning the return of goods. As for the penalty for breach of contract, the Tribunal held that the buyer's request was clearly based on what was set forth in the contract, and should therefore be supported. Nevertheless, the Tribunal held that the amount of the penalty established in the contract was too high, and made an adjustment to the amount in accordance with the relevant provisions of the contract law of the People's Republic of China. In addition, the Tribunal upheld the buyer's request that the seller should pay for storage costs.