

Case 1097: CISG 1; 30; 35 (2); 39; 45; 74

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

CISG/2003/01

3 June 2003

Original in Chinese

English translation: <http://cisgw3.law.pace.edu/cases/030603c1.html>

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An Australian buyer and a Chinese seller signed a contract for the purchase of garments. The buyer paid the amount due for the goods and shipping, but the seller delayed the delivery of the goods and the quality of the garments was very poor, which caused the buyer's clients to return them and refuse payment. The buyer had numerous fruitless discussions with the seller, and then initiated arbitration proceedings and asked the Arbitration Tribunal to order the seller to refund the money for the goods, shipping costs and loss of interest.

The parties had not established in the contract a law to govern it. In view of the fact that the place of business of the parties was in two States Parties to the CISG, the Tribunal ruled under Article 1 of the Convention that the dispute should be governed by the Convention.

The Tribunal held that the seller had violated the provisions of the contract, that the goods delivered had serious quality problems and that they were not fit for commercial sale (Article 35 (2) CISG), which had prevented the buyer from selling the goods to its clients. Under Article 45 CISG, the seller should assume responsibility for breach of contract. The Tribunal also noted that the buyer had informed the seller of the quality problems within a reasonable time limit, and therefore, had not lost its right to claim damages (Article 39 CISG).

The Tribunal, however, held that the amount of compensation demanded by the buyer for the loss of profit needed to be adjusted, as it was too high and violated the provisions of Article 74 of the Convention. The Tribunal ruled that the seller should refund the money for the goods and shipping costs to the buyer and compensate it for a certain loss of profit. The Tribunal finally held that the return of the goods did not have any practical significance, and if the seller requested such return it should bear the relevant costs.