**Case 1122: CISG 1; [11; 12]; 14(1); 19; 74; 77; 79**
People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shenchen Commission (now South China Branch)
17 September 2003
Original in Chinese
English translation: http://cisgw3.law.pace.edu/cases/030917c1.html
Abstract prepared by Zhe Zhang

In response to an offer made by an Australian seller, a Chinese buyer accepted to purchase Australian cotton. At the time of signing the contract, the buyer made changes to the number of shipments, the quantity of goods in each shipment and the time of loading contained in the sales confirmation faxed by the seller, and also deleted clauses regarding liability for breaching the contract. The seller expressed its acceptance verbally. Afterwards, being unable to obtain the required import quota and licence, the buyer wrote to the seller indicating that it could temporarily not honour the contract. Nor had the buyer drawn up a letter of credit as required by the contract. After fruitless discussions between the parties, the seller initiated arbitration proceedings, claiming that the buyer had breached the contract, and asked the Arbitration Tribunal to order the buyer to compensate for damages due to the difference from the market price, with interest, pay the cost of storage with interest, and cover the arbitration fees and the seller's legal fees. The buyer argued that its changes to the sales confirmation amounted to a new contract which had been accepted by the seller. The original contract between the buyer and the seller had never entered into force, and there was no issue of a breach of contract or a need for compensation.

Since the places of business of the parties were in States Parties to the CISG, the Tribunal ruled under article 1 CISG that the dispute should be governed by the Convention. The Tribunal held that, under article 14(1) and article 19 CISG, the changes made to the sales confirmation letter were not substantive amendments to the agreement with the seller and therefore had not become a new agreement. Since the seller had accepted verbally the changes made to the sales confirmation letter by the buyer, the contract was legally valid, and its content was the sales confirmation letter as revised by the buyer. The Tribunal also held that the problems with the import quota and licence were not grounds exempting the buyer from the responsibility for breach of contract (article 79 CISG). The Tribunal ruled that the buyer was responsible for breach of contract, and under article 74 of the Convention it should compensate the seller for the economic loss caused to it by the buyer's failure to perform the contract. At the same time, though, the seller had not performed its duty to mitigate the losses after learning that the buyer was likely to breach the contract [it had nevertheless purchased the goods to be shipped to the buyer] and the buyer could not foresee the seller's damage. The seller was thus responsible to a certain extent for the losses (article 77 CISG). The Tribunal therefore ruled, after assessing the responsibilities of both parties, that the buyer must compensate the seller for damages due to a reasonable difference from the market price, although not in the measure claimed by the seller. Furthermore, the buyer had to pay part of the storage costs and the related loss of interest. According to the Tribunal, however, the seller had to bear part of the storage fee. As a matter of fact, despite indications that the buyer might breach the contract, the seller had stored the goods that were supposed to be delivered, without further asking the buyer for the performance of the contract.