

Case 695: CISG 4; 14; 55

United States: U.S. [Federal] District Court for the Eastern District of Pennsylvania

Civ. A. 00-2638

29 March 2004

Amco Ukrservice v. American Meter Company

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See also: <http://cisgw3.law.pace.edu/cisg/wais/db/cases2/040329u1.html>

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A representative of a manufacturer of gas meters with its place of business in the United States agreed with a Ukrainian enterprise to create a joint venture with its place of business in the Ukraine. The agreement provided that the joint venture had the exclusive right to manufacture, install and distribute gas meters in the former Soviet Union. The US manufacturer would assemble 90 per cent of the components and the joint venture would assemble the remaining 10 per cent using the US manufacturer's components. The number of components to be delivered was to be based on demand in the former Soviet Union. The joint venture subsequently submitted orders to the US manufacturer. The manufacturer shipped but subsequently stopped delivery of one order and refused to extend credit to the joint venture. This effectively terminated the joint venture. The joint venture sued the US manufacturer for breach of contract. The US manufacturer moved to dismiss the complaint because the joint venture agreement was unenforceable, inter alia, because the agreement did not set out definite prices and quantities as required by the CISG.

The CISG issue before the court was whether a distributorship agreement is covered by the Convention.

The court concluded that the joint venture agreement was not covered by the CISG. Citing decisions construing the CISG by US and non-US courts in support, the court concluded that the Convention does not govern distributorship agreements because these agreements provide a framework for future sales but do not lay down precise price and quantity terms. The court notes but does not resolve the difficulty of determining the relation between articles 14 and 55 CISG. It does, however, distinguish the framework agreement from individual sales contracts concluded in accordance with that agreement: the former is not covered by the CISG, but the latter may be.

In reaching its decision, the court rejected the seller's proposed distinction between the relational or agency provisions of the agreement and the sales provisions of the agreement. The court found the distinction untenable. If adopted, the distinction would make it difficult to conclude a framework distributorship agreement because the sales provisions would be invalidated because they did not designate definite quantities and prices. The distinction would also be unjust in the case before it because the seller would be entitled to enforce the relationship provisions (e.g. buyer's duty to promote the seller's products) under non-CISG law while retaining the right to terminate the sales provisions at will under the CISG.

In a decision of 13 April 2004 the district court denied the Ukrainian party's motion for certification of an order for immediate interlocutory appeal. The court rejected the argument that it had ignored the effect of art. 3 (1) CISG on the ground that the agreement in dispute was not a sale or supply contract.