

Case 1202: CISG 1; 8(2); 8(3); 14

The Netherlands: Rechtbank Utrecht

Number: 253099/HA ZA 08-1624

21 January 2009

German company v. Quote Foodproducts BV

Available in Dutch: NJF 2009, 148

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The question that arises in this case is whether the standard terms and conditions of the seller are applicable to the contract.

Several deliveries of sesame seeds took place between the Dutch seller (the defendant) and the German buyer (the claimant). When a dispute arose between the parties, the seller argued that its terms and conditions would apply to the agreement and objected to the Dutch Court jurisdiction over the case. The buyer held the opposite. The Court, provisionally assuming the existence of an agreement, and referring to the decision of the Dutch Supreme Court of 28 January 2005, NJ 2006, 517, found that the CISG was applicable, as the case concerned the sale of movables between parties having their place of business in contracting States of the Convention.

The Court found that the terms and conditions can only be applicable if the seller has stipulated their applicability in its offer and the offer has been accepted by the buyer. The inclusion of standard terms and conditions should be recognizable for the buyer, in accordance with article 8(2) and (3) CISG. In the absence of any existing practice between the parties, the mere reference to the general terms and conditions is not sufficient to incorporate them in the contract. This reasoning applies to the case at hand, since the parties never conducted business with one another before. Supporting the arguments of the buyer, the Court also noted that there is a difference “between national and international agreements concerning the way in which the applicability of general terms of business is accepted”. In the opinion of the Court, the seller did not sufficiently motivate that the application of standard terms and conditions is customary in international trade, although it is customary of German suppliers.

Finally, the Court found that the seller should have given the buyer the opportunity to become apprised of its standard terms and conditions, for example by providing the buyer with their text. With this regard, the Court also referred to German case law (mentioning Bundesgerichtshof 31 October 2001, VIII ZR 60/01) on the applicability of standard terms and conditions, which stresses that those are applicable if their text is provided to the buyer before the conclusion of the contract.

For this reason the Court rejected the seller’s claim of lack of jurisdiction.

⁶ Prof. J. Smits was CLOUT national correspondent for the Netherlands until 24th June 2012.