

Case 1037: CISG 25; 30; 31; 34; 35; 37; 38; 39; 48; 50

Spain: Barcelona Provincial High Court

Previously heard by the Barcelona Court of First Instance No. 35, 29 January 2008

24 March 2009

Complete text: www.uc3m.es/cisg/sespan78.htm, Aranzadi/Westlaw (2009/384407)

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The Spanish buyer and the Pakistani seller, which had concluded a contract for the sale and purchase of 1,920 boxes of frozen cuttlefish having a net weight of 12.920 kg were in dispute over the quality of part of the merchandise: part of the product (5.589 kg) had been declared unfit and destroyed by order of the health authorities, while the rest had been inferior in quality to that contracted for and the quantity was also smaller, at 12.740 kg.

This was a cost and risk sale (or cost and freight, or with a cost-and-freight clause), with a bill of lading effected through a bank credit; the parties did not question the application of CISG. Quality and accuracy of description were also covered by Pakistani health certificates, which had not been contested by the port health authority of the port of destination, Barcelona, where health checks had been carried out on the goods.

The Court held, on the basis of articles 25, 30, 31, 34, 35, 37, 38, 39, 48 and 50 of CISG, that the seller had complied with all its obligations under the sale contract: it had delivered the goods, with customs documentation — an export permit — and health certificates, as well as a quality certificate (in line with the regulations and practices of the port of embarkation), it had arranged transport and it had carried the goods on board the vessel in the port of embarkation in a symbolic transfer of title. It had thus delivered the goods, handed over documents relating to them and transferred the property in the goods (CISG, arts. 30, 31 and 34) and ensured that the goods were of the quantity, quality and description required by the contract and packaged in the manner required (CISG, art. 35).

The seller had not provided sufficient evidence of the non-conformity of the goods prior to the risk transfer. That was without prejudice to any action that the seller might take against the carrier.