

**Case 1501: CISG 74**

France: Court of Cassation, Commercial Division

Appeal Nos. 12-29550, 13-18956 and 13-20230

*Dupiré Invicta industrie v. Gabo*

17 February 2015

Original in French

Published in French: Légifrance: [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr); CISG-France Database: [www.cisg-france.org](http://www.cisg-france.org)

No. 239

Abstract prepared by Claude Witz, National Correspondent, and Caroline Cohen

A company based in France committed itself to providing, over a period of several years, heating appliances to a company based in Poland, which marketed them in Poland and Slovakia. Citing an increase in the cost of raw materials, the seller refused to supply the appliances at the agreed prices.

The Court of Cassation was called upon to rule on several appeals filed against the judgement of the Court of Appeal of Reims ruling in the second instance.

In a first appeal (13-20230), the French company/seller criticized the Court of Appeal for having failed to recognize that it was in a situation of hardship. In the view of the French company, the Court of Appeal had not sought to ascertain whether the significant rise in the cost of raw materials exceeded the normal risks of increase assumed by the seller, and, in so doing, it had violated articles 1131 and 1134 of the French Civil Code, as well as article 6.2 of the Unidroit Principles.

The Court of Cassation dismissed the appeal, as the trial judges had deemed that a situation having fundamentally altered the equilibrium of the contract, liable to constitute a case of hardship, had not been established. In so doing, the Court of Cassation did not provide any response as to the admissibility of hardship under the Convention.

In a second appeal (12-29550), the Polish company inter alia contested the Court of Appeal's judgement for having rejected its application for compensation for damage suffered on account of the seller's refusal to honour orders following the rise in the cost of raw materials. The Court of Appeal had deemed that it was not possible, from the documentation prepared by the Polish company in support of the damage it had suffered, to conclude either the certainty of the existence and extent of the damage, or the foreseeability of the damage as required by article 74 of the Convention.

The Court of Cassation upheld the plea. It deemed that, in so ruling, without so much as a summary analysis of the documentation submitted to it, the Court of Appeal had failed to meet the requirements of article 455 of the French Code of Civil Procedure, according to which a judgement must be furnished with reasons.