

**Case 1702: CISG 1(1); 7; 11**

People's Republic of China: Rizhao City Intermediate People's Court, Shandong Province

(2013) Ri Min San Chu Zi No. 4

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Abstract prepared by Xiang REN

A buyer from the Republic of Korea purchased frozen monkfish from a Chinese seller; after shipment to Korea, the goods failed a quality inspection, and the seller agreed to accept return of the goods. After returning the goods, the buyer was unable to obtain a refund payment from the seller, and thereupon brought suit against the seller to demand payment of the refund and interest. The defendant failed to appear in court.

The Court held that under the provisions of Article 1(1) CISG, the Convention was the applicable law; for issues not expressly settled in the Convention, the provisions of related Chinese laws should be applied. Pursuant to Article 11 CISG, a contract for the international sale of goods had been established and taken effect, so that both parties had a duty to fulfil their contractual rights and obligations in accordance with the Convention. Based on Article 7 of the Convention, Article 4 of the General Principles of Civil Law [of the People's Republic of China] and Article 61 of the Contract Law [of the People's Republic of China], in the present case, the buyer should return the goods to the seller with the consent of the seller, and the seller should refund the payment for the transaction, as a reasonable transaction practice. The seller was unable to provide evidence that agreement had been reached with the buyer not to refund payment for the goods, and so should bear the consequences of that inability. The Court upheld the buyer's claim for refund of payment for the goods, ordered the seller to refund payment for the goods and, in the light of the circumstances obtaining in the case, ordered the seller to pay interest to the People's Bank of China account of the buyer at the loan rate for the same time-period.