

Case 299: CISG 1(1)(a)

International Chamber of Commerce, International Court of Arbitration; 7399

Interim Arbitral Award issued in 1993

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Commented on in English by Petrochilos [1999] Revue Hellenique de Droit International, 86

Commented on in French by Hascher [1993] Journal du Droit International 1040

(Abstract prepared by the Secretariat)

A Swiss buyer, plaintiff, sued a US seller, defendant, for damages due to an alleged breach of a contract for the sale of shoes. No shoes had been delivered by the seller. The issue before the arbitral tribunal was to determine the applicability of the CISG.

The arbitral tribunal held that as the CISG had entered into force both in Switzerland and the United States (the State of California) at the time of the transaction between the parties, and as the requirements contained in article 1(1)(a) CISG had been fulfilled, the CISG was applicable for deciding the (i) issue of the formation of the contract; (ii) alleged breach of contract; and (iii) extent of any damages if such breach of contract had occurred.

原告であるスイスの買主が、米国の売主である被告に対し、靴の売買に関する契約違反を理由とする損害賠償を求め提訴した。売主は靴の引渡をしていない。仲裁廷で争点となったのは、CISGの適用可能性である。

仲裁廷は、CISGはスイスおよび米国（カリフォルニア州）の両国で、当事者間の取引時において効力が発生しており、かつ、CISG第1条(1)項(a)が規定する要件を満たすから、(i)契約の成立についての争点、(ii)契約違反の主張、および、(iii)当該契約違反があったのであれば、その損害賠償の範囲を決するためにCISGが適用されると判断した。