

Case 712: CISG 74; 75; 77; 78

People's Republic of China: China International Economic & Trade Arbitration Commission [CIETAC], Shanghai Commission

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The case deals with the reasonable measures to mitigate damages, the calculation of damages following a substitute transaction after avoidance and the calculation of interest rate of loss.

本件は、損害賠償を軽減する合理的な方法、解除後の代替取引に続く損害賠償の計算、および、損害に対しての利率の計算を取り扱うものである。

An Italian buyer and a Chinese seller signed three sales confirmation letters for the purchase of men's shirts. After the goods were delivered, the buyer refused to accept the delivery and to pay the purchase price on the grounds of non-conformity of the goods and delayed delivery. After storing the goods at the port of destination for some time, the seller had to transport the goods back to China to reduce the loss and resell them at a discount price. The seller claimed for losses arising from the buyer's breach of contract with the assertions that the buyer carried out the inspection before the goods were loaded on ship and the original shipment date was postponed at the buyer's request because the buyer required modification of some provisions of the confirmation letters.

イタリアの買主と中国の売主は男性用シャツの購入についての3つの売買確認書に署名をした。物品が引渡された後、物品の不適合と引渡の遅延を理由に、買主は引渡の受領と代金の支払いを拒否した。しばらくの間仕向港で物品を保管した後、売主は損失を軽減するために、中国に物品を返送し、値引き価格で再売却せざるを得なかった。売主は、買主は物品が船積みされる前に検査をしており、かつ、買主が確認書のいくつかの規定の修正を要求したが故に元の船積み日は買主の要求で延期されたということを主張して、買主の契約違反から生じた損失について請求をした。

The Arbitration Tribunal held that the contract was governed by the CISG as both parties have their place of business in contracting states. As the buyer breached the

contract due to non-payment, it was to be held responsible for the seller's losses under Article 74 CISG. These included the price difference, the storage expenditures and the freight. With reference to Article 75 and 77 CISG, the Arbitration Tribunal stated that the seller had the right to ship the goods back to China and resell the goods in order to mitigate damages. According to Article 78 CISG, the Arbitration Tribunal also upheld the seller's claims for interest.

仲裁廷は、両当事者の営業所が締約国にあるので、本件契約は CISG が適用されると判断した。買主は代金の不払いによって契約に違反しているので、CISG74 条に基づき売主の損失について買主は責任があると判断された。その損害は、価格の差、保管費用および運賃を含むものとするされた。CISG75 および 77 条を参照して、仲裁廷は、売主は損害賠償を軽減するために、中国に物品を返送し、物品を再売却する権利があると述べた。CISG78 条により、仲裁廷は売主の利息についての請求も認容した。