

Case 855: CISG 35; 53; 78

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

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Abstract prepared by Anna Lin

A Chinese seller (claimant) and an American buyer (respondent) negotiated a contract for the purchase of bicycles. Before concluding the contract, the buyer received and accepted the design and specifications of the bicycles sent by the seller. After the bicycles were delivered, the buyer found them not having pumps, which was customary in the U.S. The seller initially rejected the buyer's request for the pumps, but on the buyer's refusal to make the payment, the seller agreed to provide the pumps if the buyer paid half of the total amount. The buyer did not respond, nor did it respond to the seller's suggestion to return the goods. Eventually, the seller filed an application for arbitration.

The Tribunal, after considering the fact that the seller had fully performed its obligation to deliver the goods according to the contractual specifications, found the buyer to be in breach of contract for not making the payment, as per article 53 CISG. The buyer was thus sentenced to make the full payment of the contractual amount plus interest to be calculated from the day after the payment was due.

中国の売主（申立人）とアメリカの買主（被申立人）が自転車の購入契約について交渉した。契約を締結する前に、買主は売主から送られてきた自転車のデザインと仕様書を受け取って了解していた。自転車が引き渡された後、買主はそれらがアメリカでは通例の空気入れを備えていないことに気づいた。売主は最初は空気入れについての買主の要求を拒否したが、買主の支払拒絶にあつて、売主はもし買主が総額の半分を支払うのであれば、空気入れを提供することに合意した。買主は返答せず、売主の物品の返還の提案にも応じなかった。結局、売主は仲裁を申し立てた。

仲裁廷は、売主が契約上の仕様書に従った物品を引き渡す売主の義務を完全に履行したという事実を考慮した後、CISG53条に従って、支払いをしていないことについて買主は契約違反であると認定した。その結果、買主は契約上の金額に支払期日から計算された利息を加えたすべての支払いを言い渡された。