

Case 855: CISG 35; 53; 78

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

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Published in English: <http://cisgw3.law.pace.edu/cases/960214c1.html> 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）は、自転車の売買契約について交渉した。契約締結前に、買主は売主から自転車のデザインと仕様の提供を受け、それを認容した。自転車の引渡しを受けた後、

買主は、アメリカでは慣習的に付属しているはずのポンプが付属していないのに気が付いた。売主は、当初は買主のポンプの要請を拒絶した。しかし、買主の代金支払いの拒絶を受けて、買主が代金の半額の支払いを条件に、ポンプを提供することに同意した。買主は売主の提案に応答せず、売主の目的物返却の提案にも応じなかった。最終的に、売り手は仲裁を申し立てた。

仲裁廷は、売主が契約の仕様に従って目的物の引渡し義務を完全に履行した事実を考慮し、C I S G 5 3 条に従って買主の代金支払い義務の不履行が契約違反にあたることを認定した。買主は、契約通りの代金支払いと、代金支払い期日の次の日から算定される利息の支払いを言い渡された。