

**Case 1282: CISG 74**

Republic of Korea

Seoul High Court 2008Na20319 ソウル高等裁判所

(First instance — Seoul Eastern District Court – 2006Gahap22303,

Last instance — Supreme Court 2009Da25982)

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Original in Korean

Abstract prepared by Haemin Lee, National Correspondent

The plaintiff, a Chinese company, sold clothing to the defendant, a Korean individual. The plaintiff delivered the clothing over several months for sale by the defendant to other buyers. Because of defects with the goods and a delay in delivery, the defendant had to pay damages to those buyers.

原告である中国の会社は被告である韓国の個人に衣類を売却した。原告は数か月にわたって買主が転売するための衣類を引き渡していた。物品の瑕疵および引渡しの遅延を理由に、被告は転買主に損害賠償を支払わなければならなくなった。

The court ruled that as the parties to the contract had their places of business in different states, both contracting states to the CISG, the Convention would apply.

裁判所は、契約当事者の営業所が異なる国に所在し、いずれも CISG の締約国であるので、CISG が適用されると判示した。

In its decision, the court noted that the plaintiff had been delivering clothing to the defendant for many years and it could have foreseen the damages as a possible consequence of a breach of contract at the time of the conclusion of the contract. Therefore, the plaintiff had to pay a sum equal to the loss suffered by the defendant (Art. 74 CISG).

裁判所は判決において、原告は多年にわたって被告に衣類を引き渡してきたことから、原告は契約違反から生じ得る結果としての損害賠償を契約締結時に予見できたはずであると指摘した。したがって、原告は被告が被った損失に等しい額を支払わなければならない (CISG74 条)。