

SUMMARY

An Australian Case Governed by the UN Convention on Contracts for the International Sale of Goods (CISG): Contract Avoidance under CISG's Article 25 (Fundamental Breach) due to the Buyer's Refusal to Establish a Timely Letter of Credit

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This paper attempts to analyze the case concluded in Brisbane in 2000 regarding a dispute of the sale of scrap steel between an Australian seller and a Malaysian buyer. They concluded a contract for the sale of approximately 30,000 metric tons plus/minus 10% of scrap steel at the price of \$164 per metric ton for delivery to Kemaman, Malaysia. According to the written contract between the parties, shipment was to be made from any Australian port during July 1996 and payment was to be made by an irrevocable letter of credit. Furthermore, the vessel's details and descriptions had to be submitted to the buyer for their approval prior to the charter party acceptance. As the buyer would not issue the letter of credit at the agreed time, on the 8th of August the seller asked the buyer to confirm by 12 p.m. on the 9th of August as to whether it was prepared to honour the contract in question. Since the buyer was not able to give its answer, the seller terminated the contract on that same day.

The Court held that the refusal to establish a timely letter of credit was clearly a fundamental breach within the meaning of Article 25 and Article 64 (1) (a) CISG and that the seller was entitled to damages and its interest for 4.16 years.

What has been achieved from reading through the full text of this case on UNILEX is as follows:

1. It has become clear that the failure to establish a timely letter of credit constitutes a fundamental breach for the sale of goods contract within the meaning of Article 25 and Article 64 (1) (a) CISG, which was drafted by the UN Commission On International Trade Law (UNCITRAL) and is effected and applicable within those 73 contracting countries.
2. The establishment of a letter of credit (L/C) once agreed for the sale of goods contract is one of the most essential terms and conditions in it. The issue of L/C has been treated as one of the most important themes to teach to those students at business course classes for "Trade Practice" and/or "International Business Transactions" conducted at universities in Japan. An L/C issue in this case has mainly been discussed at the Court in Brisbane, Australia and has been held as the above by the Court.
3. It is suggested to those weaker traders without any specialists for judicial affairs that they download this case and e-mail it to the other party for the sale of goods contract to persuade him or her into settling accounts or honouring a draft in case he or she has not established a timely letter of credit or is not prepared to honour the contract. They may avoid the need for court action.