





Business Concepts under CISG

1. Traditional cross border transactions and installment

2. Installment contracts in cross border transactions

3. Business decisions under CISG



Cross border transactions and Breach

Problem

Business ZED enters into a sales contract with Business NADA for the purchase of hanging lamps.

The contract specifies that the lamps will be delivered in equal installments at the beginning of each of the next 6 months. (50 hard drives to be delivered on the 1st of each month).

Business ZED receives the first shipment on time; however the second installment is late- but does arrive 7 days later.

Upon receipt of the late delivery, Business ZED asks Business NADA if the next delivery will also be late.

Business ZED informs Business NADA that the late delivery has created problems in its supply chain and it therefore wishes to not experience any future late deliveries.

Business NADA does not respond to the request for delivery time frames.

After waiting 5 days, Business ZED avoids the contract.

Analysis of the problem

Nature of the goods → Off the shelf stock items



Enables supplier to purchase supplies from someone else

No limits to replace the goods, as long as they are taken from a bulk

Art. 33 CISG - Failure to deliver on a specified time = breach

CISG envisages communication between the parties in cross border sales

Options to consider in case of a breach

No interest in damages or cash → Purchase supplies from a third supplier

Breach (a multi-tiered process) does not mean an end to a contract

Fundamental breach Art. 25 = Avoidance

Difficult in installment contracts

vs. Termination in domestic systems

Understanding the sale transaction

Seeking assurance of performance

If no response, or if response is vague and unclear,
then seek supply purchase from a third supplier and
claim damages (Arts. 74-76)



Installment contracts



Features of installment contracts

Goods are not unique → Supplier can purchase supplies from a third party

Larger issue → One time failure to deliver may lead to future failures to deliver



One failed delivery does not amount to a fundamental breach

Customer may request damages and allow the contract to survive

Customer may enter into a cover transaction for the delayed installment, but continue the relationship

Fundamental breach in case one delayed installment

If related to a component of a larger system, inability to function or to function properly may constitute a fundamental breach

Analysis requires assessing the *nature of an installments and the product itself*

Importance of communication in installment contracts

If customer is reasonable certain that a delivery may not be met case of delay of one delivery, buyer may ask assurances

Supplier is obliged to provide adequate assurances

If the assurances do not fit customer's needs, then he may enter in a cover transaction and seek damages

Example

MapleTech is a third supplier

They are knowledgeable of the underlying contract

Could cause problems with the negotiations process

The original supplier is still obligated to perform as required

Mapletech's unwillingness to enter into a contract does not alleviate them from their responsibility to delivery to their customer

Hardships

Hardship: Impossibility (not just impracticability) to purchase could relieve a party of its performance

Impracticability argumentative concept of under CISG

Questions: *At what point does it raise to a true hardship?*

At one point does a supplier become relived of his obligation?

Wrap up

Supplier has an obligation to deliver of goods (Art. 33)

Customer may seek damages in case of delay in one single installment (Arts. 74 and 76)

Avoidance of contract is not likely in case of installment contracts (Art. 25 - fundamental breach)



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