

仲裁文書範例 - 仲裁裁決書

仲裁裁決書 AWARD

雙方當事人：

- (1) 申訴方/反訴被訴方：賣方
- (2) 被訴方/反訴申訴方：買方

Parties：

- (1) Claimant/counter-defendant： Seller
- (2) Defendant/Counter-claimant： Buyer

仲裁地：

Place of arbitration：

事實

FACTS

1994年，雙方當事人根據某種協定規格規定簽署了3份買賣一種產品的合同。在收到貨運單據後，買方即按合同規定，支付了全部合同價的90%。

In 1994, the parties concluded three contracts for the sale of a product according to certain contract specifications. The buyer paid 90% of the price payable under each of the contracts upon presentation of the shipping documents, as contractually agreed.

按第一和第三份合同提供的產品符合協定規格，第二批貨物的規格在裝運前就有過爭議。產品抵達目的地後重新檢驗，發現其不符合協定規格。為便於脫手，經過某種處理，最終買方將產品賣給了第三方，損失慘重。

The product delivered pursuant to the first and third contracts met the contract specifications. The conformity of the second consignment was dispute prior to its shipment. When the product was again inspected upon arrival, it was found that it did not meet the contract specifications. The product was eventually sold by the buyer to third parties at considerable loss, after having undergone a certain treatment to make it more saleable.

賣方提請仲裁，要求收回10%的合同餘款。買方提起反訴，聲稱應從賣方所索費用

中扣除買方估計應由賣方賠償買方的一筆費用，即：直接損失費、財務成本費、所損失的利潤及利息費。

The seller initiated arbitration proceedings to recover the 10% balance remaining due under the contracts. The buyer filed a counterclaim alleging that the seller's claim should be set off against the amounts which the buyer estimates to be payable to the buyer by the seller, i.e., the direct losses, financing costs, lost profits and interest.

一、適用的法律

I. APPLICABLE LAW

(1) 鑒於合同未含有關實體法的任何條款，故法律問題應根據國際商會仲裁規則第 13 條第 3 款決定。根據該條規則，仲裁員們應適用它們認為適合的法律衝突規則所規定的准據法則。

(1) The contract contains no provisions regarding the substantive law. Accordingly that law has to be determined by the Arbitrators in accordance with Art. 13(3) of the ICC rules. Under that article, the Arbitrators will apply the law designated as the proper law by the rule of conflicts which they deem appropriate.

(2) 這是一個由不同國際的賣方和買方簽署的在第三國交貨的合同。買賣規定為船上交貨，故風險在賣方所在國便轉給了賣方。由此，賣方所在國似乎就成為與買賣關係最近的管轄地。

(2) The contract is between a Seller and a Buyer (of different nationalities) for delivery (in a third country). The sale was f.o.b. so that the transfer of risks to the Buyer took place in (the country of Seller). (The country of Seller) accordingly appears as being the jurisdiction to which the sale is most closely related.

(3) 有關國際貨物買賣適用法律的 1995 年 6 月 15 日《海牙公約》在涉及銷售合同時，將賣方現行居住地法律視為占支配地位的法律。買方所在國加入了《海牙公約》，賣方所在國則沒有。儘管如此，法律衝突法的總趨勢卻是適用合同主要業務的債務人現行所在地的國內法。在銷售合同中，此債務人為賣方。基於這些因素，賣方所在國的法律似乎便成了規定買賣雙方之間合同的准據法。

(3) The Hague Convention on the law applicable to international sales of goods dated 15 June 1995 (Art. 3) regarding sales contracts, refers as governing law to the law of the Seller's current residence. (The country of the Buyer) has adhered to the Hague convention, not (the country of the Seller). However, the general trend in conflicts of law is to apply the domestic law of the current residence of the debtor of the essential undertaking arising under the contract. That debtor in a sales contract is the Seller. Based on those combined findings, (the law of the country of the Seller) appears to be the proper law governing the Contract between the Seller and the Buyer.

(4) 至於賣方所在國法律的適用規則，仲裁員們依據的是雙方當事人各自陳述的理由，以及仲裁員們從一位獨立諮詢人處所得的資訊。根據國際商會仲裁規則第 13 條最後一段之規定，仲裁員們也將考慮相關的貿易慣例。

As regards the applicable rules of (the law of the country of the Seller), the Arbitrators have relied on the Parties' respective statements on the subject and on the information obtained by the Arbitration from an independent consultant. The Arbitrators, in accordance with the last paragraph of Art. 13 of the ICC rules, will also take into account the relevant trade usage.

二、反訴的可受理性

II. ADMISSIBILITY OF THE COUNTERCLAIM

(5) 仲裁庭認為，1980 年 4 月 11 日的《關於國際貨物銷售的聯合國公約》(通稱《維也納公約》)是現行貿易慣例的最好淵源，即使買賣雙方所在國均不是公約的成員國，倘若買賣雙方所在國均為公約成員國，在本案中，該公約不僅可考慮作為貿易慣例適用，而且還可作為法律適用

(5) The Tribunal finds that there is no better source to determine the prevailing trade usage than terms of the United Convention on the International Sale of Goods of 11 April 1980, usually called the Vienna Convention. This is also even though neither (the country of the Buyer) nor (the country of the Seller) are parties to that Convention. If they were, the Convention might be applicable to this case as a matter of law and not only as reflecting the trade usage.

(6) 《維也納公約》已在 17 個國家生效，考慮用它適用於國際貨物銷售中的不符規格事項有通用慣例，應屬合情合理。《維也納公約》第 38 條第 1 款規定買方負有“當場檢查或叫人檢查貨物”的責任。買方應在注意或應當注意到瑕疵後的合理期限內通知賣方貨物不符合合同的規格；否則，他將喪失就上述不符規格而提起索賠的權利。第 39 條第 1 款具體規定道：

“如買方在交貨後兩年之內沒有通知賣方，無論如何，買方都將喪失在貨物不符規格問題上的申訴權利，除非此種不符規格構成了對長期擔保的違背”。

(6) The Vienna Convention, which has been given effect to in 17 countries, may be fairly taken to reflect the generally recognized usage regarding the matter of the non-conformity of goods on international sales. Art. 38(1) of the Convention puts the onus on the Buyer to “examine the goods or cause them to be examined promptly”. The buyer should then notify the Seller of the nonconformity of the goods within a reasonable period as of the moment he noticed or should have noticed the defect ; otherwise he forfeits his right to raise a claim based on the said non-conformity. Art. 39(1) specifies in the respect that : “In any event the buyer shall lose the right to rely on a lack of conformity of the goods if he has not given notice thereof to the seller within a period of two years from the date on which the goods were handed over, unless the lack of conformity constituted a breach of guarantee covering a longer

period.”

(7) 本案中，買方在合理的期限內已對貨運作過檢查，因為在貨物抵達之前，一位專家曾被請去檢查過裝船。買方也應被認定在合理的期限內，即在專家報告公佈後的 8 天內，就產品瑕疵作過通報。

(7) In the circumstances, the Buyer had the shipment examined within a reasonable time-span since (an expert) was requested to inspect the shipment even before the goods had arrived. The Buyer should also be deemed to have given notice of the defects within a reasonable period, that is eight days after the expert's report had been published.

(8) 仲裁庭認為，就本案情況而言，買方遵守了上述《維也納公約》的要件規定。這些要件要比賣方所在國的法律的規定靈活許多。賣方所在國法律所規定的買方通知賣方的時限特別短，特別具體，在這點上，似乎是通用的貿易慣例的一種例外。

(8) The Tribunal finds that, in the circumstances of the case, the Buyer has complied with the above-mentioned requirements of the Vienna Convention. These requirements are considerably more flexible than those provided under (the law of the country of the Seller). This law, by imposing extremely short and specific time requirements in respect of the giving of the notice of defects by the Buyer to the Seller appears to be an exception on this point to the generally accepted trade usage.

(9) 無論如何，也應當認定賣方已經喪失了援引《維也納》第 38 和第 39 條有關產品不符規格的任何規定的權利，因為第 40 條規定：“只有賣方知道，或他不可能不知道，或他沒有透露有關的不符規格的事實，他便不能適用第 38 和第 39 條規定”。實際看來這也是事實，因為書證和口證都清楚表明賣方知道且不可能不知道提交的貨物不合同規格規定。

(9) In any case, the Seller should be regarded as having forfeited its right to invoke any non-compliance with the requirements of Art. 38 and 39 of the Vienna Convention since Art. 40 states that the Seller cannot rely on Arts. 38 and 39, if the lack of conformity relates to facts of which he knew, or of which he could not have been unaware, and which he did not disclose. Indeed, this appears to be the case, since it clearly transpires from the file and evidence that the Seller knew and could not be unaware (of the non-conformity of the consignment to) contract specification.

(10) 就是假定該條款可適用於本案，它無論如何也沒有規定本仲裁庭應駁回反訴，即使對反訴的審理會耽誤對主訴的審查。按其規定，要求抵消的反訴一般都應接受，除非仲裁庭認為同時審理反訴會過分耽誤對事實的判決，因而認為把反訴同主訴分開比較恰當。在本案中，按規定說明，主訴和反訴已經進行共同審理，成為一次性裁決事項，故沒有理由在將它們分割開。

(10) This provision, even assuming that it may apply in the circumstances, does not in any way require the tribunal to reject the counterclaim if its examination might delay that of the main claim. It simply states that the counterclaim for setting off is always admissible

except only that the tribunal may find it appropriate to serve the counterclaim from the main claim lest a concurrent examination of counterclaim should excessively delay the judgment on the merits. In the present case, the main Claim and the counterclaim, in accordance with the Terms of Reference, have been examined together so as to be the subject of a single award, and there is no reason to separate them.

(11) 仲裁庭裁決如下：賣方應獲得其全部所主張的金額，扣除買方在反訴中提出的抵消部分數額。

(11) The Tribunal awarded the Seller the full amount of its claim and set it off against part of the counterclaim filed by the Buyer.