

CISG Advisory Council Opinion No. 5: Annex (Case Overview) [\[1\]](#)

Country/ Arbitration	Court	Date	Docket No.	CISG - online No.	Details	
1.	Arbitration	ICC Court of Arbitration	1 January 1995	7754	843	<ul style="list-style-type: none"> • <i>Facts:</i> Buyer ordered computer hardware from seller, which was to be provided by seller's supplier and assembled by buyer's customer. A modification to the hardware was made prior to delivery, which was unknown to buyer and buyer's customer. Buyer's customer informed seller that it could not accept the modification and requested that the hardware be in accordance with the initial documentation. In the meantime, buyer informed seller that only half of the amount of hardware initially ordered would be needed due to difficulties experienced by buyer's customer. Seller shipped an initial consignment of modified hardware to buyer, who accepted the equipment but refused to accept the rest. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> The goods have to be totally improper for their utilization. In this case, the non-conformity only caused buyer severe problems. • <i>Case text:</i> Link to English text of arbitration award <http://cisgw3.law.pace.edu/cases/957754i1.html>
2.	Argentina	Juzgado Nacional de Primera Instancia en lo Comercial	20 May 1991	50272	461	<ul style="list-style-type: none"> • <i>Facts:</i> Buyer from Argentina bought goods from US seller. The seller asked for interest accrued between the date of delivery of the goods and the date fixed in the contract for the deferred payment of the price. • <i>Decision:</i> No discussion of fundamental breach. Seller was granted interest. • <i>Reasons for decision:</i> Accrual of interest during the agreed period in case of deferred payment constitutes a usage widely known and regularly observed in international trade. This can be compared with the Incoterms, which, being a trade usage, are also applicable through Art. 9(2) CISG. • <i>Case text:</i> English translation <http://cisgw3.law.pace.edu/cases/910520a1.html>
3.	Germany	Bundesgerichtshof	3 April 1996	VIII ZR 51/95	135	<ul style="list-style-type: none"> • <i>Facts:</i> Dutch company had entered into four separate sales agreements with the German buyer for the delivery of five tons of cobalt sulfate. They agreed that the

						<p>goods should be of British origin and that the seller should supply certificates of origin and quality. Payment was by means of documentary credit and the parties agreed on delivery EXW.</p> <ul style="list-style-type: none"> • <i>Breach</i>: Certificate of origin was wrong. The goods were from South Africa. The quality also fell short of the description in the contract because the seller delivered cobalt sulphate that is usually used for feeding animals. • <i>Decision</i>: No fundamental breach. • <i>Reasons for the decision</i>: The buyer could get the necessary documents himself without unreasonable expenditure. • <i>Case text</i>: English translation + link to German text <http://cisgw3.law.pace.edu/cases/960403g1.html>
4.	Germany	OLG Frankfurt am Main	17 September 1991	5 U 164/90	28	<ul style="list-style-type: none"> • <i>Facts</i>: Italian producer sells shoes to German buyer. The parties had agreed upon an ancillary duty of preserving exclusivity. • <i>Breach</i>: Seller also sold shoes to other buyers. • <i>Decision</i>: Fundamental breach. • <i>Reasons for the decision</i>: Even the breach of an ancillary duty can amount to a fundamental breach. The trustworthiness of the seller was harmed. • <i>Case text</i>: English translation + link to German text <http://cisgw3.law.pace.edu/cases/910917g1.html>
5.	Germany	OLG Frankfurt am Main	18 January 1994	5 U 15/93	123	<ul style="list-style-type: none"> • <i>Facts</i>: German buyer purchases shoes from Italian producer. • <i>Breach</i>: Shoes were non-conforming. Wrong material, color, etc. • <i>Decision</i>: No fundamental breach. • <i>Reasons for the decision</i>: The buyer did not argue that he could not use the shoes in a reasonable way. • <i>Case text</i>: English abstract + link to German text <http://cisgw3.law.pace.edu/cases/940420g1.html>
6.	Germany	OLG Frankfurt am Main	20 April 1994	13 U 51/93	125	<ul style="list-style-type: none"> • <i>Facts</i>: German buyer bought 1.75 t of New Zealand-mussels from Swiss Seller. Buyer discovered the non-conformity in Germany, i.e., after the transport. • <i>Breach</i>: Mussels were cadmium-contaminated. • <i>Decision</i>: No fundamental breach. • <i>Reasons for the decision</i>: Mussels still could be used for consumption.

						<ul style="list-style-type: none"> • <i>Case text:</i> English abstract + link to German text <http://cisgw3.law.pace.edu/cases/940420g1.html>
7.	Germany	OLG Hamburg	14 December 1994	5 U 224/93	216	<ul style="list-style-type: none"> • <i>Facts and Breach:</i> See supra 3. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> The fact that seller provided for the wrong certificates is not decisive as the buyer could easily acquire correct documents himself without unreasonable expenditure. It is not decisive whether the duty to provide for clean documents was a primary duty of the seller or not.
8.	Germany	OLG Hamburg	28 February 1997	1 U 167/95	261	<ul style="list-style-type: none"> • <i>Facts:</i> British buyer and German seller contracted for the supply of 18 tons of iron-molybdenum from China, CIF Rotterdam. Goods had to be transported from China to Rotterdam. • <i>Breach:</i> Delay in delivery. • <i>Decision:</i> Fundamental breach. • <i>Reasons for decision:</i> It was essential to perform prior to that date. The parties agreed to Incoterm CIF, then time is always of the essence. • Good example for fluctuations in price. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/970228g1.html>
9.	Germany	OLG Hamburg	26 November 1999	1 U 31/99	515	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer purchasing pants from Brazil seller. The non-conformities were discovered after transportation by plane. • <i>Breach:</i> 80-90% of the goods were wrongfully labeled regarding their size and, partly, they were mouldy and stained. • <i>Decision:</i> Fundamental breach. • <i>Reasons for decision:</i> The goods deviated altogether from the contractually agreed quality. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/991126g1.html>
10.	Germany	OLG Hamm	22 September 1992	19 U 97/91	57	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer purchasing 200 t of bacon from Italian enterprise. • <i>Breach:</i> Goods have not been packaged. • <i>Decision:</i> Having due consideration to the circumstances, the bacon did not have to be packaged. Thus, there was a duty to take delivery. • <i>Reasons for the decision:</i> If a buyer wants to reject the goods (i.e., withhold

						<p>performance of the duty to accept the goods, Art. 53 CISG), it is decisive whether the seller acted in conformity with the contract.</p> <ul style="list-style-type: none"> • <i>Case text:</i> English abstract + link to German text <http://cisgw3.law.pace.edu/cases/920922g1.html>
11	Germany	OLG Koblenz	31 January 1997	2 U 31/96	256	<ul style="list-style-type: none"> • <i>Facts:</i> Dutch seller delivered acrylic blankets to a German buyer. • <i>Breach:</i> Some of the blankets were of inferior quality and buyer claimed that five reels of blankets were missing. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> Account has to be taken not only of the gravity of the defect, but also of the willingness of the party in breach to provide substitute goods without causing unreasonable inconvenience to the other party. In this case, even a serious lack of quality was said not to constitute a fundamental breach as the seller had offered to furnish additional blankets. • <i>Case text:</i> English abstract + link to German text <http://cisgw3.law.pace.edu/cases/970131g1.html>
12	Germany	OLG Köln	14 October 2002	16 U 77/01	709	<ul style="list-style-type: none"> • <i>Facts:</i> German company bought designer clothes from Italian seller. • <i>Breach:</i> Clothes were poorly cut. • <i>Decision:</i> Fundamental breach. • <i>Reasons for the decision:</i> Decisive whether or not it is possible for the buyer to otherwise manufacture or sell the goods in regular business dealings, possibly even with a price reduction, without unreasonable expense, despite the deviation of the goods from the contractually agreed quality or despite another defect. Customers of expensive designer clothes have high standards and almost all clothes were rendered unmarketable by the defects. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/021014g1.html>
13	Germany	OLG Stuttgart	12 March 2001	5 U 216/99	841	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer purchasing 100 t of apple juice concentrate and strawberries from Austrian seller. Goods had been transported from Poland to Germany. • <i>Breach:</i> Seller mixed apple juice concentrate with glucose syrup. Buyer discovered the non-conformity of the goods after carrying out tests at its site in Germany.

						<ul style="list-style-type: none"> • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> It is decisive whether, without unreasonable expenditure, the buyer was able to process the goods differently or sell them in the normal course of business, if only with a price discount, and if the buyer could reasonably be expected to take such measures. In this case, buyer used the goods for the production of apple fruit drinks, which may contain sugar additives. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/010312g1.html>
14 .	Germany	Landgericht Berlin	15 September 1994	52 S 247/94	399	<ul style="list-style-type: none"> • <i>Facts:</i> German party buying shoes from Italian seller. • <i>Breach:</i> Shoes were non-conforming. • <i>Decision:</i> Fundamental breach. • <i>Reasons for decision:</i> When a party denies the breach and refuses to repair or to make a new delivery, there can be a fundamental breach. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/940915g1.html>
15 .	Germany	Landgericht Darmstadt	22 December 1992	14 O 165/92	177	<ul style="list-style-type: none"> • <i>Facts:</i> See supra 6. • <i>Breach:</i> Mussels were cadmium-contaminated. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> It was still possible to resell or eat the mussels. There was no danger to the health. • <i>Case text:</i> Link to German text <http://cisgw3.law.pace.edu/cases/921222g1.html>
16 .	Germany	Landgericht Ellwangen	21 August 1995	1 KfH O 32/95	279	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer purchasing 80 t of paprika from Spanish seller. • <i>Breach:</i> The paprika contained approximately 150% of the maximum concentration of ethyl oxide admissible under German food and drug law. • <i>Decision:</i> Fundamental breach. • <i>Reasons for the decision:</i> The goods were not in accordance with German food and drug law and, therefore, were not suitable for resale in Germany. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/950821g2.html>

17	Germany	Landgericht Hamburg	5 November 1993	404 O 175/92	215	<ul style="list-style-type: none"> • See <i>supra</i> 3. • <i>Case text</i>: Link to German text <http://cisgw3.law.pace.edu/cases/931105g1.html>
18	Germany	Landgericht Heidelberg	3 July 1992	O 42/92	38	<ul style="list-style-type: none"> • <i>Facts</i>: German buyer purchasing computer components from US seller. • <i>Breach</i>: Seller delivered wrong amount. • <i>Decision</i>: No fundamental breach. • <i>Reasons for the decision</i>: Subsequent delivery would have still been possible and reasonable. • <i>Case text</i>: English abstract + link to German text <http://cisgw3.law.pace.edu/cases/920703g1.html>
19	Germany	Landgericht Landshut	5 April 1995	54 O 644/94	193	<ul style="list-style-type: none"> • <i>Facts</i>: Swiss buyer and German seller agreed on the delivery of sportswear in the value of 143,394.65 DM. • <i>Breach</i>: Sportswear shrunk about 10 to 15% after being washed. • <i>Decision</i>: Fundamental breach. • <i>Reasons for the decision</i>: The clothes shrunk about two sizes. Customers would have either returned the merchandise or would not have bought any more from the buyer. • <i>Case text</i>: English translation + link to German text <http://cisgw3.law.pace.edu/cases/950405g1.html>
20	Germany	Landgericht München	27 February 2002	5 HKO 3936/00	654	<ul style="list-style-type: none"> • <i>Facts</i>: German party bought globes from Italian seller. • <i>Breach</i>: Globes were unable to spin because of insufficient performance of the motor. • <i>Decision</i>: No fundamental breach. • <i>Reasons for decision</i>: Restitution of the goods is arduous, especially in international trade. The purpose of the goods is of the essence. In this case, the globes were to be used as a prestigious show object. The spinning of the globes is not the main function. • <i>Case text</i>: English translation + link to German text <http://cisgw3.law.pace.edu/cases/020227g1.html>
21	Germany	Landgericht Oldenburg	6 July 1994	12 O 3010/93	274	<ul style="list-style-type: none"> • <i>Facts</i>: German purchaser buying furniture from Austrian seller. • <i>Breach</i>: There were deviations in the color and the joints were different in size. • <i>Decision</i>: Fundamental breach. • <i>Reasons for decision</i>: An unsuccessful

						<p>repair amounts to a fundamental breach. A reduction in price in the value of 50% constitutes a substantial loss.</p> <ul style="list-style-type: none"> • <i>Case text:</i> Link to German text <http://cisgw3.law.pace.edu/cases/940706g2.html>
22	Germany	Amtsgericht Hamburg	14 December 2000	317 C 472/00	692	<ul style="list-style-type: none"> • <i>Facts:</i> French buyer purchasing clothes from German seller. Alleged non-conformities were discovered at buyer's site in France. • <i>Breach:</i> Non-conformity not described. • <i>Decision:</i> No discussion with regard to fundamentality of the breach. General principle of a right to withhold performance. • <i>Reasons for the decision:</i> Court impliedly stated that a rejection of the goods is possible if the buyer gave notice of non-conformity. • <i>Case text:</i> Link to German text <http://cisgw3.law.pace.edu/cases/001214g1.html>
23	Germany	Amtsgericht Ludwigsburg	21 December 1990	4 C 549/90	17	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer bought textiles from French Seller. Goods had to be transported. • <i>Breach:</i> Delay in delivery. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> The value of the goods was not affected by a delay of two days. • <i>Case text:</i> Link to German text <http://cisgw3.law.pace.edu/cases/901221g1.html>
24	Switzerland	Bundesgericht	15 September 2000	4C.105/2000	770	<ul style="list-style-type: none"> • <i>Facts:</i> Italian enterprise bought 40 t of cotton from Swiss company - payable by means of letter of credit. Goods had to be transported from Egypt to Italy. • <i>Breach:</i> Delay in the delivery of the goods. • <i>Decision:</i> Fundamental breach. • <i>Reasons for the decision:</i> A delay in the delivery of goods constitutes a fundamental breach of contract if the parties decided that the delivery must be made at a specific date, and that date was determinative from the point of view of the interest of the buyer in the performance of the contract and the seller knew this, especially in cases concerning seasonal goods. The circumstances determine if the delivery must be without other delay. This is also true for the delivery at a certain date of goods for which the price in the market varies everyday. Such circumstances exist when an agreement with a reseller is concerned

						<p>and the price can go down suddenly and considerably.</p> <ul style="list-style-type: none"> • <i>Case text:</i> English translation + French text <http://cisgw3.law.pace.edu/cases/000915s2.html>
25.	Switzerland	Bundesgericht	28 October 1998	4C.179/1998	413	<ul style="list-style-type: none"> • <i>Facts:</i> Buyer from Switzerland purchasing frozen meat from German seller. • <i>Breach:</i> The value of the goods was reduced by 25.5% because of blood and moisture in the meat. • <i>Decision:</i> No fundamental breach. • <i>Reasons for decision:</i> An objective standard has to be applied. The relevant question to be asked is whether the goods can reasonably be used in another way or be resold, even with any reduction in price. In Germany, a deviation of 10% of the value of the goods is considered to be fundamental. In the case at hand there was the opportunity to resell the goods in a reasonable way. • <i>Case text:</i> English abstract + link to German text <http://cisgw3.law.pace.edu/cases/981028s1.html>
26.	Switzerland	Zivilgericht Basel-Stadt	1 March 2002	P 1997/482	729	<ul style="list-style-type: none"> • <i>Facts:</i> Swiss company buying soy protein products from Belgian seller. Goods had to be transported to Switzerland. Non-conformity was discovered in Switzerland. • <i>Breach:</i> 9/26 of the goods were genetically modified. • <i>Decision:</i> Fundamental breach. • <i>Reasons for the decision:</i> The interest of the parties concerning a special agreement is decisive. For the parties and in the food industry in general, the question whether food is genetically modified or not is very important. • <i>Case text:</i> English translation + link to German text <http://cisgw3.law.pace.edu/cases/020301s1.html>
27.	Switzerland	Handelsgericht des Kantons Aargau	5 November 2002	OR.2001.00029	715	<ul style="list-style-type: none"> • <i>Facts:</i> German buyer purchasing inflatable triumphal arch from Swiss seller. Non-conformity was detected after installation in Hockenheim. • <i>Breach:</i> Triumphal arch deflates. • <i>Decision:</i> No fundamental breach. • <i>Reasons for the decision:</i> Repair or delivery of replacement goods was possible without unreasonable delay. The triumphal arch was to be used over a longer period of time. • <i>Case text:</i> English translation + link to

						German text < http://cisgw3.law.pace.edu/cases/021105s1.html >
28.	Switzerland	Kantonsgericht Schaffhausen	27 January 2004	No. 11/1999/99	960	<ul style="list-style-type: none"> • <i>Facts</i>: Swiss buyer bought fifty model locomotives, each with a size of 75 cm and a weight of 10 kg, from German seller. • <i>Breach</i>: Locomotives had delicate gears and while the locomotives were in operation, there was unacceptable noise. • <i>Decision</i>: Fundamental breach • <i>Reasons for the decision</i>: Goods could not be used for resale. • <i>Case text</i>: English translation + German text <http://cisgw3.law.pace.edu/cases/040127s1.html>
29.	Switzerland	Appellationsgericht Basel. Stadt	22 August 2003	33/2002/SAS/s o	943	<ul style="list-style-type: none"> • <i>Facts and Breach</i>: See <i>supra</i> 26 • <i>Decision</i>: Fundamental breach • <i>Reasons for the decision</i>: The question whether food is genetically modified or not was very important. • <i>Case text</i>: English translation + link to German text <http://cisgw3.law.pace.edu/cases/030822s1.html>
30.	USA	U.S. Court of Appeals (5 th Circuit)	11 June 2003 Case name <i>BP International, Ltd. and BP Exploration & Oil, Inc., Plaintiffs-Appellants v. Empresa Estatal Petroleos de Ecuador, et al., Defendants, Empresa Estatal Petroleos de Ecuador and Saybolt, Inc., Defendants-Appellees</i>	02-20166	730	<ul style="list-style-type: none"> • <i>Facts</i>: Buyer from Ecuador purchasing 140,000 barrels of unleaded gasoline from US seller. Goods were to be transported - CFR, Incoterms - from Texas to Ecuador. Non-conformity was discovered in Ecuador after transportation. • <i>Breach</i>: Gum content of the gasoline was too high. • Fundamentality of the breach was not discussed due to passing of the risk. • The CISG incorporates Incoterms through article 9(2). • <i>Case text</i>: <http://cisgw3.law.pace.edu/cases/030611u1.html>
31.	USA	U.S. Court of Appeals (2 nd Circuit)	6 December 1995	95 -7182, 95-7186	140	<ul style="list-style-type: none"> • <i>Facts</i>: Italian enterprise bought from US seller 10,800 compressors for use in air conditioners. The goods had to be shipped and payment was to be made by L/C.

			Case name <i>Delchi Carrier, S.p.A. v. Rotorex Corp.</i>			<ul style="list-style-type: none"> • <i>Breach:</i> The compressors had reduced cooling capacity and consumed too much energy. • <i>Decision:</i> Fundamental breach. • <i>Reasons for the decision:</i> Cooling capacity und energy consumption are important aspects for air conditioners. • <i>Case text:</i> <http://cisgw3.law.pace.edu/cases/951206u1.html>
32 .	USA	U.S. District Court, (S.D. New York)	26 March 2002 Case name <i>St. Paul Guardian Insurance Company and Travelers Insurance Company, as subrogees of Shared Imaging, Inc. v. Neuromed Medical Systems & Support, GmbH, et al.</i>	00 Civ. 934 (SHS)	615	<ul style="list-style-type: none"> • <i>Facts:</i> US buyer purchasing Magnetic Resonance Imaging System ("MRI") from German seller. MRI had to be transported - CIF. • <i>Breach:</i> MRI was damaged when it arrived at its ultimate destination. • Fundamentality of the breach was not discussed. • CIF Incoterm governed by virtue of article 9(2) CISG. Risk passed. • <i>Case text:</i> <http://cisgw3.law.pace.edu/cases/020326u1.html>

FOOTNOTE

1. Annex to the CISG-AC Opinion no 5, The buyer's right to avoid the contract in case of non-conforming goods or documents, 7 May 2005, Badenweiler (Germany). Rapporteur: Professor Dr. Ingeborg Schwenzer, LL.M., Professor of Private Law, University of Basel. The case overview was prepared for the CISG Advisory Council by Benjamin K. Leisinger, Academic Assistant at the University of Basel, and contains all cases cited in or underlying Opinion no 5. This means that some cases are related to the Incoterms as an international trade usage or the relevance of time and are without direct connection to the avoidance of the contract because of non-conformity of the goods or documents.