

CISG Advisory Council Opinion No. 14

Interest Under Article 78 CISG

ADDENDUM

Analysis of Cases Result of Analysis of 274 Decisions Relating to Art 78 CISG¹

| CREDITOR'S LAW VIA PIL OR DIRECT ² | DEBTOR'S LAW VIA PIL OR DIRECT ³ | PICC/PECL | CHOICE OF LAW ⁴ | LIBOR | NO EXPLICIT RULE APPLIED ⁵ | ACCORDING TO CLAIM | CONTRACTUAL INTEREST RATE APPLIED | NOT RELEVANT ⁶ |
|---|---|-----------|----------------------------|-------|---------------------------------------|--------------------|-----------------------------------|---------------------------|
| 103 | 27 | 1 | 17 | 3 | 48 | 22 | 9 | 21 |

| DOMICILIARY RATE OF CURRENCY | INTEREST ACCORDING TO SPECIAL BILATERAL TREATY | INTEREST AS DAMAGES (LOAN INTEREST) | POST-JUDGEMENT INTEREST (NOT COUNTED IN THE ABOVE NUMBER) |
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| 13 | 1 | 9 | 6 |

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² Decisions where the court or arbitral tribunal either via private international law rules, or by directly deducing general principles from Art. 7/II CISG applies the interest rate at the place of business of the creditor are counted under this column.

³ Decisions where the court or arbitral tribunal either via private international law rules, or by directly deducing general principles from Art. 7/II CISG applies the interest rate at the place of business of the debtor are counted under this column.

⁴ Decisions where the court or arbitral tribunal uses directly the interest rate applicable by the law chosen by the parties fall under this heading.

⁵ Decisions where the court or arbitral tribunal applies an interest rate without further explaining where this rate is deduced from fall under this category.

⁶ Decisions where interest is not granted at all or the issue is left open, as well as decisions where interest is granted in a restitution relation are counted under this column. Art 82 not Art 79 CISG governs the applicable interest rate in case of restitution.

| | CISG-online Number/ Country/Arbitration | Court/Date | Parties / Country | Claim | Relevant Part of Decision |
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| 1. | 1305 (Arbitration) | ICC International Court of Arbitration 01.08.1988 | Not available | Sales price and storage costs not paid | Price and costs + interest must be paid (NO EXPLICIT RULE APPLIED) |
| 2. | 775 (Arbitration) | ICC International Court of Arbitration 01.12.1996 | SELLER'S COUNTRY: France (Respondent) BUYER'S COUNTRY: Austria (Claimant) | Seller was awarded lost profit | “[Seller] claimed interest at 10.5%. CISG Art. 78 does not specify a particular interest rate. The arbitrator considered it appropriate to apply a commercially reasonable interest rate in accordance with Art. 7.4.9 of the UNIDROIT Principles. Finding that the interest claimed was commercially reasonable, [seller] was awarded interest as claimed.” (REFERENCE TO PICC BUT INTEREST AWARDED AS CLAIMED) |
| 3. | 566 (Arbitration) | ICC International Court of Arbitration 01.01.1994 | SELLER'S COUNTRY: Netherlands (Respondent) BUYER'S COUNTRY: U.S.A. (Claimant) | Lack of conformity/ Damages claim | Choice of law: “the laws of Switzerland” – interest rate is also defined according to this choice. Article 73 of the Swiss Code of Obligations whereby, in the absence of a determination of the rate of interest by agreement or law or usages, that rate shall be 5% per annum. (CHOICE OF LAW) |
| 4. | 526 (Arbitration) | ICC International Court of Arbitration 01.01.1995 | SELLER'S COUNTRY: Austria (Respondent) BUYER'S COUNTRY: Switzerland (Claimant) | Seller did not deliver, costs for bags prepared in vain by the buyer and costs of making a substitute sales are claimed | „The UNIDROIT Principles provide in Article 7.4.9 (2) that the interest rate corresponds to the average bank short-term lending rate to prime borrowers. This corresponds to Article 4.507 (1) of the PECL adopted by the Commission on European Contract Law [...]. The arbitrator considers it justified to apply to the dispute identical rules contained in the UNIDROIT Principles and the PECL as general principles in the sense of Article 7(2) of the Vienna Convention 1980. The interest rate LIBOR plus 2% which is claimed by the [Buyer] corresponds to the bank short-term lending rate to companies. The [Buyer] is thus granted this interest rate.” (REFERENCE TO PICC BUT INTEREST AWARDED AS |

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| | | | | | CLAIMED) |
| 5. | 1421 (Arbitration) | ICC International Court of Arbitration 01.01.2003 | SELLER'S COUNTRY: Italy (Respondent) BUYER'S COUNTRY: United States (Claimant) | Buyer did not pay in time, seller caused increase in damage | Interest was awarded to [Buyer] at the contractually agreed rate. As no contractually agreed rate of interest applied to the [Seller], the sole arbitrator applied the LIBOR rate as the generally accepted rate in international financial markets. "In this regard, the London Inter Bank Offered Rate (LIBOR) on the US\$ at 12 months (around 1.5%), increased of a spread of two points, constitutes a correct reference." (LIBOR RATE) |
| 6. | 707 (Arbitration) | ICC International Court of Arbitration 01.07.1999 | UNAVAILABLE/UNAVAILABLE | Buyer fell behind on the payments and then ceased making payments | The contract stipulated that the law of Switzerland applied to "all matters respecting the making, interpretation and performance of this contract." The Arbitral Tribunal determined that the contract between the buyer and the seller was a contract for sale of goods under article 3(1) CISG, and that the CISG applied pursuant to article 1(1)(a) CISG, as Switzerland is a Contracting State... According to article 78 CISG, finally, if a party fails to pay the price of any other sum that is in arrears, the other party is entitled to interest on it. The rate to be applied, however, is a matter of domestic law. The Arbitral Tribunal thus applied the Swiss law to determine the applicable interest rate to be paid by the buyer. (CHOICE OF LAW) |
| 7. | 1970 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 01.07.2006 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Buyer did not pay the price | "Regarding to the [Seller]'s claim for late interest charge in the amount of US \$108,096.12 on the basis of Article 5 of the Contract, the Tribunal overrules this claim in that such a late interest charge is too high (10% for the first month and double for every following month) and is penal in nature. According to Article 78 of CISG, the Tribunal holds that it is reasonable to calculate the interest on the payment of goods from the date set in Article 5 of the Contract. The total interest on the payments of goods as of the date of the award is US \$31,602.40." (NO EXPLICIT RULE APPLIED) |
| 8. | 1925 (Arbitration) | China International Economic & Trade Arbitration Commission | SELLER'S COUNTRY: People's Republic of China (Claimant) | Buyer did not pay the price | "On 13 September 2006, the [Seller] explained the interest request, advising that the interest should be calculated from 15 March 2004 to 16 May 2006, and the interest rate should |

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| | | (CIETAC) 01.11.2006 | BUYER'S COUNTRY: United States (Respondent) | | be the RMB loan annual interest rate of 5.40%.” This is the interest rate applicable in China, place of seller. Court accepted this claim and rate: “It is reasonable for the [Seller] to assert an interest rate of annual rate 5.40%, the [Buyer] failed to respond; Arbitration Tribunal accepts the interest rate sought by the [Seller].” (ACCORDING TO CLAIM – CREDITOR’S PLACE OF BUSINESS) |
| 9. | 1294 (Arbitration) | ICC International Court of Arbitration 01.10.1996 | SELLER’S COUNTRY: Norway (Claimant) BUYER’S COUNTRY: Norway (Respondent) | Three claims of buyer due to non-, late and non-conform delivery | “As the interest rate of 9 per cent per annum was not disputed by either party and determined to be reasonable by the Tribunal based on the currency in question, this rate was accepted by the Tribunal.” (ACCORDING TO CLAIM) |
| 10. | 1308 (Arbitration) | ICC International Court of Arbitration 01.10.1998 | SELLER’S COUNTRY: Morocco (Claimant) BUYER’S COUNTRY: France (Respondent) | Buyer did not pay on time | Choice of law is “Swiss Code of Obligation” – interest rate is also defined according to this choice. (CHOICE OF LAW) |
| 11. | 1914 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 01.10.2005 | SELLER’S COUNTRY: Germany (Claimant) BUYER’S COUNTRY: People’s Republic of China (Respondent) | Buyer did partially not pay on time | The Tribunal followed the claim of the seller since the buyer had not opposed to the rate. Therefore: “The interest should be at the annual RMB loan rate published by China People’s Bank, 5.31% before 28 October 2004, 5.58% before 29 October 2004, and the foreign exchange rate between Euro and RMB was 1,074.64.” (ACCORDING TO CLAIM) |
| 12. | 1300 (Arbitration) | ICC International Court of Arbitration 01.09.1997 | UNAVAILABLE | Buyer refused to pay for last shipment | “Since the [seller] was entitled to payment in German currency [Deutsch Mark], the Arbitrator held that the [seller] was entitled to interest using the market rate for Deutsch Mark on the date of default. The contract required that the [buyer] make payment for the goods delivered within ten days from the date of delivery. Since the goods were delivered on 28 January 1994, payment would then be due on 7 February 1994. When payment was not made on this date, the [buyer] was then determined to be in default. The commercially reasonable interest on the Deutsch Mark on that date was 5.4%. Accordingly, the [seller] was awarded interest in the amount of 5.4% commencing on 8 February 1994 until such |

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| | | | | | payment was made. (DOMICILARY RATE OF CURRENCY) |
| 13. | 901 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 02.12.2002 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: Ukraine (Respondent) | Partial non-payment of sales price | <p>“The Tribunal concluded that the interest should be calculated based on the sum of the [Buyer]'s main debt. (Article 395(1) of the Russian Federation Civil Code sets forth that the court has discretion to sustain a claim of interest in the amount based on the bank interest rate on the date of the decision in the place of creditor). Taking into account that the [Seller] is a legal entity located in the USA and that the [Seller] claimed annual interest for the use of another's funds only from the date of the award, pursuant to Article 395(1) of the Russian Federation Civil Code, the Tribunal is of the opinion that the LIBOR rate as of 11 October 2002 may be applied. In accordance with the statement on the London Inter-Bank Offer Rate, which was submitted by the [Seller], [such rate] constituted 1.7700% annually [as of 11 October 2002]. In addition, the Tribunal is of the opinion that the [Seller]'s claim to recover the said annual interest to the date of factual payment is reasonable. [Such conclusion] is based on Article 395(3) of the Russian Federation Civil Code which allows to calculate interest up to the date of payment.”</p> <p>(CHOICE OF LAW = CREDITOR’S PLACE OF BUSINESS)</p> |
| 14. | 1712 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 02.09.2005 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Purchase Price | <p>“Therefore, the [Seller] requests the [Buyer] to pay interest on the delayed payments. Since both China and France are Member States of the UNIDROIT Principles of International Commercial Contracts (hereinafter, the "Principles"), the interest rate should be determined according to Article 7.4.9 of the Principles:” "The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment. Because the payment should be made in US dollars, the interest rate should be the prime interest rate of the United</p> |

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| | | | | | States, i.e., the annual interest rate of 4.67% in 2002, the annual interest rate of 4.12% in 2003, and the annual interest rate of 4% in 2004.... Because the parties did not stipulate the method to calculate interest on delayed payment or non-payment, based on the relevant background and facts of this case, the Arbitration Tribunal sustains the [Seller]'s allegation on the annual interest rate." (PICC) |
| 15. | 1443 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 04.02.2002 | SELLER'S COUNTRY: Singapore (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Failing to open a letter of credit (L/C) within the additional time fixed and the seller's right to avoid the contract in case of fundamental breach | "The loan interest rate announced by the Bank of China for the same period." This was what the seller claimed for and was also awarded. (ACCORDING TO CLAIM) |
| 16. | 1806 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 04.06.1999 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Not every typographical error amounts to a fundamental breach of contract. The buyer should have acted in good faith and accepted delivery of the goods = Breach by not accepting and paying | 8 % is applied but without giving any reason why (NO EXPLICIT RULE APPLIED) |
| 17. | 1253 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 05.04.1999 | SELLER'S COUNTRY: Hong Kong (Claimant) BUYER'S COUNTRY: Mainland China (Respondent) | | Claims denied (NOT RELEVANT) |
| 18. | 1521 (Arbitration) | Arbitral Institute of the Stockholm Chamber of Commerce 05.04.2007 | SELLER'S COUNTRY: Brazil (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Unfounded termination due to alleged non-conform delivery by buyer | "[Seller] wrote to me suggesting that I apply the New York Civil Practice Laws and Rules which sets 9% per annum. Mr. C... contested [Seller]'s proposal and counter-proposed the rate applied by the Chinese Courts, namely 7.56% per annum. I propose to exercise my discretion in a broad-brush manner |

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| | | | | | by taking the rate of 6% from 1 January 2006 until payment to be compounded twice yearly.” (NO EXPLICIT RULE APPLIED) |
| 19. | 1449 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 06.12.2000 | SELLER'S COUNTRY: Hong Kong(Claimant) BUYER'S COUNTRY:USA(Respondent) | Buyer not taking delivery/not paying | According to the contract: “[Buyer] shall pay the interest on the delayed payment based on the 0.45% monthly interest rate agreed by the two parties calculated from 4 February 2000 to the day of the [Buyer]'s actual payment” (CONTRACTUAL RATE) |
| 20. | 1112 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 06.01.1999 | SELLER'S COUNTRY: Australia (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Buyer not taking delivery/not paying | “(ii) US \$8,719.74 for interest loss on the money not paid by the [Buyer] and US \$7,186.34 for storage charges.” However, no explanation regarding the applied rate. (NO EXPLICIT RULE APPLIED) |
| 21. | 1249 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 06.06.2000 | SELLER'S COUNTRY: Russian Federation (Respondent) BUYER'S COUNTRY: Great Britain (Claimant) | Seller did not perform | “Concerning the [buyer]'s claim for annual interest based on Article 395 of the Russian Federation Civil Code, the Tribunal holds that the [buyer] did not satisfy the requirements of that Article, inter alia, the [buyer] did not provide to the Tribunal the rates of annual interest at the creditor's place of business and the period for which the interest should be calculated that would have allowed the Tribunal to evaluate the [buyer]'s claim. Accordingly, the [buyer]'s claim for interest has to be denied.” (PIL = CREDITOR'S PLACE OF BUSINESS) |
| 22. | 973 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 06.03.1997 | SELLER'S COUNTRY: P.R. China (Claimant) BUYER'S COUNTRY: Italy (Respondent) | Buyer not taking delivery/not paying | “[Seller]'s claims for interest consist of three parts and shall be calculated at the interest rate of 0.625% which is the standard rate for working capital loans of the Pudong Branch of the Bank of China.” (CREDITOR'S PLACE OF BUSINESS) |
| 23. | 1570 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) | SELLER'S COUNTRY: Australia (Respondent) BUYER'S COUNTRY: People's Republic of China (Claimant) | Defective delivery, avoidance, restitution | Interest rate 6.93 %, but no explanation why. As claimed by the buyer. (ACCORDING TO CLAIM) |

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| | | 06.11.2002 | | | |
| 24. | 1559 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 06.11.2003 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price + damages | "It was found that the annual interest rate for a EUR saving account of Bank of China was 2.0625%; therefore, the [Seller] claims for interest based on the aforesaid rate." The Court has accepted the claim of the Chinese seller. (ACCORDING TO CLAIM - CREDITOR'S PLACE OF BUSINESS) |
| 25. | 1943 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 07.04.2006 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: France (Respondent) | Purchase Price | (CONTRACTUAL RATE) |
| 26. | 1593 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 07.07.2003 | SELLER'S COUNTRY: PR China (Claimant) BUYER'S COUNTRY: unavailable (Respondent) | Purchase Price | No explanation regarding interest. (NOT RELEVANT) |
| 27. | 1893 Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 08.10.1997 | SELLER'S COUNTRY: Australia (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Contract is concluded validly, buyers unilateral avoidance is a fundamental breach | 8.5 % but without any explanation, claim of the seller was accepted without questioning. (NO EXPLICIT RULE APPLIED) |
| 28. | 1471 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 09.04.2004 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Purchase Price | "Therefore, based on this article, the [Seller – China] is entitled to interest on the payment in arrears. Referencing the RMB bank loan interest rate of Chinese domestic commercial banks, the [Seller]'s calculating of interest at 0.021%/day after exchanging the payment in arrears into RMB is reasonable, which the Arbitration Tribunal accepts." (ACCORDING TO CLAIM - CREDITOR'S PLACE OF BUSINESS) |
| 29. | 1239 (Arbitration) | Tribunal of International Commercial Arbitration | SELLER'S COUNTRY: Russian Federation | Purchase Price | "The [Seller] has presented information from the Central Bank of Russia "Average rates of short-term credits in Russia |

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| | | at the Russian Federation Chamber of Commerce and Industry Arbitration 09.06.2004 | (Claimant) BUYER'S COUNTRY: Cyprus (Respondent) | | granted by the Russian credit organizations in US dollars" published in the "Bank of Russia Bulletin"... "the [Seller] has soundly used provisions of Russian legislation (art. 395 of the Russian Civil Code) admitted as subsidiary statute. According to art. 395 (1) of the Russian Civil Code, the Tribunal finds it possible to use rates of the interest per annum applicable as of the date the action was brought." (PIL = CREDITOR'S PLACE OF BUSINESS) |
| 30. | 1444 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 09.11.2005 | SELLER'S COUNTRY: P.R. China(Respondent) BUYER'S COUNTRY: Australia (Claimant) | Late delivery | No interest: "the Arbitration Tribunal holds that the [Buyer]'s claim for loss of interest beyond the US \$35,955 contract violation fee lacks agreement and legal basis" (NOT RELEVANT) |
| 31. | 1539 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 09.10.2002 | SELLER'S COUNTRY: P.R. China (Respondent) BUYER'S COUNTRY: Unavailable (Claimant) | Restitution of sums paid by the buyer without getting the goods | "The [Seller] should refund to the [Buyer] the price of US \$3,085,382.10 for the goods undelivered, and pay for the interest, US \$680,000 thereon (calculated from July 1997 to July 2001 according to statutory US dollar interest rate, with the interest for the time after to be calculated separately);" The court accepted this claim but the capital was reduced with the effect that also the interest was reduced. But the rate was not debated. Payment was made in USD, but the Tribunal does not define which statute will find application. Given the fact that the countries are unclear (PR China and Japan probably) the decision is vague. (INTEREST IN CASE OF RESTITUTION = NOT RELEVANT) |
| 32. | 774 (Arbitration) | Arbitration Court attached to the Hungarian Chamber of Commerce and Industry 10.12.1996 | SELLER'S COUNTRY: Yugoslavia (Claimant) BUYER'S COUNTRY: Hungary (Respondent) | Buyer could not make payment due to UN embargo | The Vienna Convention on the International Sale of Goods (chosen by the parties as applicable law) does not contain relevant provisions on interest for delay. Therefore, the arbitrators have to establish the applicable law by virtue of the relevant Hungarian conflict rules applicable on ground of Article 14(2) of the Rules of Proceedings of this Court of Arbitration. The relevant conflict rule is contained in §24 of the 1979 Hungarian Act on Private International Law. According to this provision, the applicable law is the substantive law of the Seller -- which is in this case Yugoslav |

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| | | | | | <p>law. ... Parties agreed on the rate: "The Claimant and the [Buyer] ... confirmed their common understanding relating to the 8% interests to be applied in the present proceedings"</p> <p>(PIL = CREDITOR'S PLACE OF BUSINESS = BUT NOT CLEAR WHETHER THE 8% IS DERIVED FROM YUGOSLAVIAN LAW)</p> |
| 33. | 1478 (Arbitration) | <p>Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration</p> <p>10.02.2005</p> | <p>SELLER'S COUNTRY: Russian Federation (Claimant)</p> <p>BUYER'S COUNTRY: Poland (Respondent)</p> | Purchase Price | <p>"Since the places of business of the parties to the international sales contract are located in Contracting States to the Vienna Convention 1980 [...], the Convention is held applicable to their relations under the international sales contract and the Russian substantive law, chosen by the parties, is applicable as a subsidiary statute. ... According to art. 395 of the Russian Civil Code, the bank rate for the calculation of interest in the amount of 9% is confirmed by the [Seller] by the certificate issued by a Russian bank at [Seller]'s place of business."</p> <p>(CHOICE OF LAW = CREDITOR'S PLACE OF BUSINESS)</p> |
| 34. | 1355 (Arbitration) | <p>China International Economic & Trade Arbitration Commission (CIETAC)</p> <p>10.10.1996</p> | <p>SELLER'S COUNTRY: People's Republic of China (Respondent)</p> <p>BUYER'S COUNTRY: Germany (Claimant)</p> | Damages since seller did not deliver | <p>7 % annual interest was awarded without giving any reason or explanation.</p> <p>(NO EXPLICIT RULE APPLIED)</p> |
| 35. | 1540 (Arbitration) | <p>China International Economic & Trade Arbitration Commission (CIETAC)</p> <p>10.10.2002</p> | <p>SELLER'S COUNTRY: People's Republic of China (Claimant)</p> <p>BUYER'S COUNTRY: United States (Respondent)</p> | Buyer did not pay | <p>"As to the annual interest rate of 7% which the [Seller] alleged, the Arbitration Tribunal holds that it should be adjusted to an annual rate of 5% according to the bank's loan rate at that time."</p> <p>(NO EXPLICIT RULE APPLIED)</p> |
| 36. | 1670 (Arbitration) | <p>China International Economic & Trade Arbitration Commission (CIETAC)</p> <p>12.04.1999</p> | <p>SELLER'S COUNTRY: People's Republic of China (Respondent)</p> <p>BUYER'S COUNTRY: Switzerland (Claimant)</p> | Damages since seller did not deliver | <p>7 % annual interest was awarded without giving any reason or explanation.</p> <p>(NO EXPLICIT RULE APPLIED)</p> |

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| 37. | 1855 (Arbitration) | Yugoslav Chamber of Commerce 12.04.2002 | SELLER'S COUNTRY: Yugoslavia (Serbia) (Claimant) BUYER'S COUNTRY: Czech Republic (Respondent) | Purchase price | “The Arbitral Tribunal has concluded that, in accordance with Article 78 of the Vienna Convention, the Seller is entitled to interest if the Buyer fails to pay the price. The Arbitral Tribunal determines the interest rate in respect to the domiciliary rate of the currency of payment specified in the Contract of 20 May 2000.” (DOMICILIARY RATE OF THE CURRENCY) |
| 38. | 1709 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 12.08.2005 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Italy (Respondent) | Purchase Price | “However, the Tribunal finds that the interest rate (0.4% daily) claimed by the [Seller] is not reasonable. With reference to the lending rate of the People's Bank of China for the same period, the Tribunal finds that the interest rate on the overdue payments shall be 0.21% daily.” (CREDITOR'S PLACE OF BUSINESS) |
| 39. | 1113 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 12.02.1999 | SELLER'S COUNTRY: Germany (Claimant) BUYERS' COUNTRY: People's Republic of China (Respondent) | Buyer did not take delivery and pay | “The [Seller] asks to have the interest calculated at the annual rate of 12.5% to November 1998. The Arbitral Tribunal sustains this request.” Neither the court nor the Claimant give any explanation regarding the 12.5 %. (NO EXPLICIT RULE APPLIED) |
| 40. | 1659 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 12.05.1999 | SELLER'S COUNTRY: Republic of Korea (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Purchase price | 6 % annual interest was awarded since the contract was providing for it (CONTRACTUAL RATE) |
| 41. | 1368 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 13.12.1995 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: Czech Republic (Respondent) | Purchase price | “Therefore, the Tribunal applied the relevant provisions of the Russian substantive law, which is the subsidiary law applicable to the present dispute. In accordance with art. 395 of Part I of the Russian Civil Code, for the use of another company's money as a result of its illegal retention the interest on the total amount of these funds shall be due. The interest rate is to be determined by the discount rate of the bank interest existing at creditor's place of business. The burden of proof of the amount of the discount rate rests on the creditor.” (PIL = CREDITOR'S PLACE OF BUSINESS) |

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| 42. | 1205 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 13.01.1999 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Purchase price | No details regarding interest rate (NOT RELEVANT) |
| 43. | 1622 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 13.01.2006 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: Australia (Respondent) | Purchase Price | Claimant can only ask either for interest or the penalty. Penalty was chosen in the case. No relevance regarding interest rate. (NOT RELEVANT) |
| 44. | 1483 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 14.12.2005 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: Kazakhstan (Respondent) | Purchase Price | “The Tribunal considers that the [Seller] is authorized to claim interest for usage of another's monetary resources. Under art. 78 of the Vienna Convention 1980, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it. Since the Convention does not determine method of calculation of such interest, it should be calculated in accordance with applicable national law, based on art. 7(2) of the Convention. As noted above, the MKAC has determined Russian law is applicable to the present dispute. In accordance with art 395 of the Civil Code of the Russian Federation, the applicable interest rate is determined based on the bank-rate at the creditor's place of business on the date of performance of monetary obligation or its corresponding part. In cases of judicial debt recovery, the court may satisfy a creditor's claim based on the bank-rate interest on the date of lodging the claim or on the date of rendering the decision. Given that [Seller] is the creditor in the present case, the Bank of Russia refinancing rate shall be applied. As of the date of rendering the present decision, the rate of 13% annually is applied, set from 15 June 2004, by the decision of directors of the Bank of Russia dated 11 June 2004.” (PIL = CREDITOR’S PLACE OF BUSINESS) (NOT RELEVANT) |
| 45. | 2075 (Arbitration) | Tribunal of International | SELLER’S COUNTRY: | N/F | (NOT RELEVANT) |

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| | | Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 24.02.2006 | Russia (Claimant) BUYER'S COUNTRY: Netherlands (Respondent) | | |
| 46. | 1523 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 14.03.1996 | SELLER'S COUNTRY: P.R. China (Respondent) BUYER'S COUNTRY: Switzerland (Claimant) | Seller did not deliver | (NOT RELEVANT) |
| 47. | 1795 (Arbitration) | Serbian Chamber of Commerce 15.07.2008 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Serbia (Respondent) | Purchase price | <p>“The [Seller] requested a domiciliary interest at the rate equal to the main refinancing rate of the European Central Bank on all of the amounts requested in [Seller]'s claim, including the part of the claim in which [Seller] succeeded (liquidated damages in the amount of EUR 45,895.00). In accordance with Article 78 of the Vienna Convention, the arbitrator finds that the request is justified, and that the determination of the interest rate in accordance with the domiciliary rate of the currency is already accepted in the arbitral practice of the Foreign Trade Court of Arbitration, and is in accordance with the generally accepted customs for international payments. However, the [Seller] failed to set out the relevant moment for determining the interest rate. The arbitrator took into consideration the existing practice of the Foreign Trade Court of Arbitration to award the interest in accordance with the relevant domiciliary interest rate. After having reviewed the interest rate data published by the European Central Bank, the arbitrator determined that the average main refinancing rate in the period from the moment of commencement of running of the interest to the first awarded claim (4 March 2005) until the moment of making the Award (15 July 2008) for the part of the claim expressed in EUR was 3.5% annually.”</p> <p>(DOMICILIARY RATE OF CURRENCY)</p> |
| 48. | 2008 (Arbitration) | Tribunal of International Commercial Arbitration | SELLER'S COUNTRY: Austria (Claimant) | Purchase Price | “Since the amount of interest is not defined in the CISG, the Tribunal referred to Art. 395 of the Civil Code of the RF. ... |

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| | | at the Russian Federation Chamber of Commerce and Industry Arbitration 15.11.2006 | BUYER'S COUNTRY: Russian Federation (Respondent) | | According to Art. 395(1) of the Civil Code of the RF, the interest rate shall be defined by the discount rate of the bank interest, existing by the date of the discharge of the pecuniary obligation or of the corresponding part thereof at the place of the creditor's location. ... According to the practice of applying Art. 395 of the Civil Code of the RF while performing a calculation in foreign currency, if there is no official discount rate of the bank interest on currency credits at the day of execution of the pecuniary obligation in the creditor's location, the interest rate is determined on the basis of publications in the official sources of information concerning average discount rates of the bank interest on short-term currency credits in the creditor's location. ... If there is no such publication, the amount of the percentage to be collected is established on the basis of a certificate of a leading bank at the location of the creditor, presented by the Claimant as a proof to support the rate on short-term foreign currency loans applied by it.” (CHOICE OF LAW = CREDITOR’S PLACE OF BUSINESS) |
| 49. | 939 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 16.04.2002 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: Kazakhstan (Respondent) | Purchase Price | Since the contract provided for penalty payment in case of delay, no additional interest up until the arbitration procedure is calculated. (CONTRACTUAL RATE) “From the date of the award to the date of factual payment is reasonable and should be sustained. [The interest] must be calculated based on the LIBOR rate as of the date of the arbitral award” (POST-JUDGEMENT INTEREST) |
| 50. | 1111 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 16.08.1996 | SELLER'S COUNTRY: People's Republic of China (Respondent) BUYER'S COUNTRY: United States (Claimant) | Seller did not perform, Replacement transaction, damages | “The [Seller] shall pay US \$74,630 to the [Buyer] and interest calculated from 15 November 1994 (Moment of replacement deal; YMA) to the day the payment is made at 8% annual rate.” No explanation regarding 8%. (NO EXPLICIT RULE APPLIED) |
| 51. | 1518 (Arbitration) | China International Economic & Trade | SELLER'S COUNTRY: Singapore (Claimant) | Buyer did not pay | Contractual provision: “If the [Buyer] fails to do so, it shall pay interest on the delayed payment at the preferential loan |

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| | | Arbitration Commission (CIETAC) 16.07.2002 | BUYER'S COUNTRY: People's Republic of China (Respondent) | | interest rate of Bank of America plus 2%." "Because the [Seller] failed to provide evidence to prove that the preferential annual loan interest rate was 8.5% at that time, considering the bank interest rate at the same time, the floating interest rate, and the facts in this case, the Arbitration Tribunal deems that it is reasonable that the [Buyer] shall pay the interest at an the annual interest rate of 7%." (NO EXPLICIT RULE APPLIED) |
| 52. | 975 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 17.02.2003 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: United States (Respondent) | Seller's claim to recover from the Buyer the sum paid as penalties for the breach of the customs rules | "During the proceeding, the [Seller] filed a corrected claim to recover [such annual interest] for 270 days at the rate of 11.8% annually based on "Vestnik Banka Rossii" No. 40-41 of 17 July 2002 ["The Bank of Russia News"]. According to [the said publication], [the said] rate was set for August 2001, i.e., when the claim was brought. ... Pursuant to Article 78 CISG, Article 395(1) of the Russian Federation Civil Code, Clause 52 of the Resolution issued by the Russian Federation Supreme Court and Higher Arbitration Court No. 6/8 of 1 July, 1996 on Recovery of Annual Interest on Short-term Loans in Hard Currency, as well as to the Resolution of the Russian Federation Supreme Court and Higher Arbitration Court No. 13/14 of 8 October, 1998, the Tribunal finds that the [Seller]'s claim to recover from the [Buyer] interest for the use of another's funds should be granted in the amount claimed by the [Seller]." (PIL = CREDITOR'S PLACE OF BUSINESS) |
| 53. | 1576 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 17.02.2003 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | Buyer did not pay | "As to the [Seller]'s claim for interest on the payment in arrears, the Arbitration Tribunal deems that it was an interest on the delayed payment. Based on the aforesaid facts, this interest should have been foreseen by the [Buyer], so the [Seller] is entitled to this interest and the [Buyer] shall pay this interest due to its delayed payment. The [Seller]'s calculation on interest based on a 2/1000 daily interest rate is reasonable." No explanation why this rate was chosen. (NO EXPLICIT RULE APPLIED) |
| 54. | 1240 (Arbitration) | Tribunal of International Commercial Arbitration | SELLER'S COUNTRY: Cyprus (Claimant) | Seller did not deliver = damages | "On the basis of art. 78 of the CISG and art. 395 of the Civil Code of the Russian Federation, interest for the use of |

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| | | at the Russian Federation Chamber of Commerce and Industry Arbitration 17.06.2004 | BUYER'S COUNTRY: Russian Federation (Respondent) | | monetary funds of another is calculated from the date when the obligation to deliver goods [under Contract No. 196 of 2 July 1998] was transformed to a pecuniary obligation. The interest rate is determined on the basis of the certificate issued by a Cyprian bank - the bank of the creditor's country. ... According to the adjusted calculations of the Claimant [Buyer], the interest is calculated for the period from 22 May 1999 to 28 May 2004; since, as it was established above, Claimant's right to the monetary payment with regard to the main indebtedness arose starting from 1 July 2000, the Tribunal finds that Claimant's claim for the recovery of the interest is to be granted only for the period from 1 July 2000 to 28 May 2004;" "According to art. 395 of the Russian Civil Code, the bank rate for the calculation of the interest is confirmed by the Claimant by means of the relevant certificate issued by the Cyprian bank as the bank of the creditor's country in the amount of 8%." (PIL = CYPRUS LAW = CREDITOR'S PLACE OF BUSINESS) |
| 55. | 979 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 17.09.2003 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Buyer did not pay | "After reviewing the [Seller]'s claim to recover from the [Buyer] annual interest for the delay in payment and taking into account that Article 78 CISG does not set forth the interest rate, the Tribunal applies Article 395 of the Russian Federation Civil Code to the relationships at issue. [Article 395] is being applied as subsidiary law. ... If a creditor is a legal entity, the interest rate shall be determined based on the bank interest rate in the place of creditor on the date when the monetary obligation or any relevant part of it was to be performed. According to the explanation contained in Clause 52 of the Resolution No. 6/8 of 1 July 1996 issued by the Plenum of the Russian Federation Supreme Court and High Arbitration Court, when a [monetary obligation] is stated in foreign currency and when there is no official bank interest rate on loans issued in hard currency on the date when the monetary obligation was to be performed in the place of creditor, such interest rate shall be determined based on the publications in the official media concerning the median bank interest rate on short-term loans in hard currency in the place |

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| | | | | | of creditor.” (CHOICE OF LAW = RUSSIAN LAW = CREDITOR’S PLACE OF BUSINESS) |
| 56. | 1544 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 18.04.2003 | SELLER’S COUNTRY: People’s Republic of China (Claimant) BUYER’S COUNTRY: United States (Respondent) | Purchase Price | “The Tribunal supports the [Buyer]’s argument that "the date of starting calculation of interest of outstanding payment shall not be earlier than April 6, 2002". As to rate of the interest, 6.3% per month held by the [Seller] based on its loan interest is not supported by the Tribunal, because the loan interest paid by the Seller] is irrelevant to the [Buyer]. According to the general practice, the Tribunal decides that it is reasonable and impartial that the interest rate shall be 3.4% per month.” (NO EXPLICIT RULE APPLIED) |
| 57. | 1609 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 18.12.2003 | SELLER’S COUNTRY: Hong Kong (Claimant) BUYER’S COUNTRY: People’s Republic of China (Respondent) | Purchase Price | “The [Buyer] breached the Contract, because it refused to make the remaining payment without justifiable reasons. Article 78 of CISG stipulates, "If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it ..." The [Buyer] should be held liable for its breach, and should compensate the [Seller] for interest on the outstanding amount. The outstanding amount should be £66,179.79, but the amount claimed by the [Seller] was £66,179.78; the Arbitration Tribunal respected the [Seller]’s request that the outstanding amount be £66,179.78; the interest should be calculated from 9 October 2001 to the day when the [Buyer] actually makes the payment, and the annual interest rate should be 5%.” (NO EXPLICIT RULE APPLIED) |
| 58. | 751 = 1337 (Arbitration) | ICC International Court of Arbitration 01.09.1998 | SELLER’S COUNTRY: Italy (Respondent) BUYER’S COUNTRY: Liechtenstein (Claimant) | Purchase Price | “Given that long-term contracts are involved, the termination of relations on the ground of Claimant’s fault, as mentioned above, does not extend to relations that have already ended. With regard to payment obligations remaining unperformed, performance cannot be ordered, but rather compensation for damages [. . .]. This compensation is calculated in proportion to the amount from the settlement remaining unpaid, to which overdue interest has been added, as provided for in Article 1219, no. 3 of the Italian Civil Code, with effect from the due date [...] and up until full payment of the balance. The |

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| | | | | | <p>Vienna Convention lays down a general rule, in Article 78, that the liability for payment of a sum is subject to interest for late payment, but it does not lay down the criteria for calculating this interest. International case law presents a wide range of possibilities in this respect, but amongst the criteria adopted in various judgements, the more appropriate appears to be that of the rates generally applied in international trade for the contractual currency [...]. In concrete terms, since the contractual currency is the dollar and the parties are European, the applicable rate is the 3-month LIBOR on the dollar, increased by one percentage point, with effect from the due date not respected up until full payment has been made. However, capitalization of interest is excluded, as from Respondent's arbitration answer, since this is not provided for in the Vienna Convention and does not appear to be in keeping with international trade usages. Revaluation is also included in the above mentioned rate.”</p> <p>(LIBOR)</p> |
| 59. | 1646 (Arbitration) | <p>ICC International Court of Arbitration</p> <p>20.12.1999</p> | <p>SELLER'S COUNTRY: Germany (Claimant)</p> <p>BUYER'S COUNTRY: Yugoslavia (Respondent)</p> | Purchase Price | <p>“According to the leading doctrine, the interest rate is governed by the applicable domestic law. In this case, the parties have designated Swiss law in their order of arbitration. Arts. 73 and 104 of the Swiss Law of Obligations provide that claims are subject to an annual interest rate of 5%, unless a different interest rate has been designated by contract, statute or common practice.”</p> <p>(CHOICE OF LAW)</p> |
| 60. | 1708 (Arbitration) | <p>China International Economic & Trade Arbitration Commission (CIETAC)</p> <p>20.07.2005</p> | <p>SELLER'S COUNTRY: Switzerland (Claimant)</p> <p>BUYER'S COUNTRY: People's Republic of China (Respondent)</p> | Purchase Price | <p>“As to the interest rate, referencing the Supreme Court's Response on the Standards to Calculate Liquidated Damages on Overdue Payment (...) and Article 6 of China People's Bank's Notice to Lower Deposit Interest Rate and Load Rate, the Arbitration Tribunal held that the daily interest rate of 2.1/10,000 was reasonable.”</p> <p>(CHOICE OF LAW)</p> |
| 61. | 1264 (Arbitration) | <p>China International Economic & Trade Arbitration Commission</p> | <p>SELLER'S COUNTRY: People's Republic of China (Claimant)</p> | Purchase Price | <p>“The Arbitration Tribunal also accepts the interest rate sought by the [Seller], which was determined in reference to the annual loan interest rate published by the People's Bank of</p> |

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| | | (CIETAC) 20.05.1999 | BUYER'S COUNTRY: Singapore (Respondent) | | China on February 1999.” (ACCORDING TO CLAIM = CREDITOR'S LAW) |
| 62. | 1356 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 20.05.1999 | SELLER'S COUNTRY: Belgium (Respondent) BUYER'S COUNTRY: People's Republic of China (Claimant) | Nonconformity, damages claim of buyer | “Because of the [Seller]'s breach of contracts, the [Buyer] suffered losses of US \$78,020 in the resale of the goods under the contracts, the interest on this amount shall be calculated from 1 April 1998 (the due date for the payment of resale goods stipulated in the contract between [Buyer] and Guangdong ___ Car Trade Co, Ltd on 6 March 1997) to the actual payment day of this loss and at a 7% annual interest rate. The [Seller] should pay such interest.” (NO EXPLICIT RULE APPLIED) |
| 63. | 1261 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 20.11.1997 | SELLER'S COUNTRY: Hong Kong (Respondent) BUYER'S COUNTRY: Hong Kong (Claimant) | Nonconformity, damages claim of buyer | “The [Seller] shall pay to the [Buyer] US \$380,655.44 and the interest on this sum calculated from 12 October 1996 to the date of actual payment at 6% annual interest within 30 days of this award.” (NO EXPLICIT RULE APPLIED) |
| 64. | 2080 (Arbitration) | Serbian Chamber of Commerce 21.02.2005 | SELLER'S COUNTRY: Serbia and Montenegro / Serbia (Claimants) BUYER'S COUNTRY: FYR Macedonia (Respondent) | | (NOT RELEVANT) |
| 65. | 187 (Arbitration) | Schiedsgericht der Handelskammer Hamburg Arbitration 21.03.1996 | SELLER'S COUNTRY: Hong Kong (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Seller asks for payment | The arbitral tribunal applied the CISG as the relevant German law under article 1(1)(b) CISG. “The claim to interest arises ex Art. 78 CISG. As to the interest rate, national law applies subsidiarily, in the absence of a more specific regulation in the CISG, according to its Art 7(2); here, it is the legal rate for bilateral commercial transactions.” (PIL = GERMAN LAW = DEBTOR'S LAW) |
| 66. | 1296 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry | SELLER'S COUNTRY: Germany (Respondent) BUYER'S COUNTRY: Russia (Claimant) | Nonconformity, damages claim of buyer | No choice of law, German law is applicable according to the PIL rules: “d) After reviewing the [Buyer]'s claim to recover 7% annual interest from the [Seller] for the use of the funds as of the date of the claim, the Tribunal finds that such question is not settled in the CISG. [Thus,] Article 352 of the German |

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| | | Arbitration 22.06.1997 | | | Civil Code should apply to the parties' relationships in this part. The said rule of law sets forth the 5% annual interest for a delay in performing one's monetary obligation under a bilateral contract in which the rate of interest is not stated.” (PIL = GERMAN LAW = CREDITOR’S LAW) |
| 67. | 568 = 971 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 23.02.1995 | SELLER'S COUNTRY: China (Respondent) BUYER'S COUNTRY: United States (Claimant) | Nonconformity, damages claim of buyer | “The rate of 5% per annum” (NO EXPLICIT RULE APPLIED) |
| 68. | 1825 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 24.02.2005 | SELLER'S COUNTRY: People's Republic of China [?] (Respondent) BUYER'S COUNTRY: Russian Federation [?] (Claimant) | Non delivery, buyer claims money paid back | “Interest rate shall be the bank's one-year lending rate, i.e., 5.31%; (calculated at the 'lending interest rate of 5.31% then prevailing from June 2003 to the end of June 2004).” (NO EXPLICIT RULE APPLIED) |
| 69. | 1519 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 24.06.2005 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Seller’s claim for payment of price | „[Seller]'s calculation is based on the amount of interest applicable by virtue of art. 395 of the Russian Civil Code in reference to pecuniary obligations in Russian Rubles. In accordance with section 55(1) GTS USSR-PRC, when there is a delay of performance of a pecuniary obligation, the interest rate of 6 per cent of the delayed payment shall be applied starting from the day when the delay in payment commenced.“ = General Terms of Sale between the USSR and the PRC [People's Republic of China] (SPECIAL TREATY PROVISIONS) |
| 70. | 1854 (Arbitration) | Yugoslav Chamber of Commerce Arbitration 24.09.2001 | SELLER'S COUNTRY: Yugoslavia (Serbia) (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Seller’s claim for payment of price | “The Vienna Convention was applied in the present dispute between the Parties regarding the matters covered by it; on all other matters, the Sole Arbitrator applied the provisions of the Yugoslavian Law on Contracts and Torts” “Pursuant to Article 78 of the Vienna Convention, the Sole Arbitrator has found that the Seller is entitled to interest on the amounts due that the Buyer has not paid. The same obligation is provided in Article 278 of the LCT, obliging the |

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| | | | | | debtor to pay a default interest on the main debt at the interest rate determined by the federal law. At the time of the conclusion of the contracts between the Parties, the Law on the Default Interest Rate (Official Gazette of SR Yugoslavia no. 24/94) was in force. It provided for a 6% yearly interest rate for claims in foreign currencies payable to individuals abroad.” (PIL = YUGOSLAVIA = CREDITOR’S PLACE OF BUSINESS) |
| 71. | 1468 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 25.12.2001 | SELLER'S COUNTRY: People's Republic of China (Respondent) BUYER'S COUNTRY: Australia (Claimant) | Defective goods, restitution claims | “Interest on the price for the goods (calculated to 27 October 2001, totalling 90 days): US \$13,860 × 7.75% × 90/360 = US \$269.” (INTEREST IN CASE OF RESTITUTION = NOT RELEVANT) |
| 72. | 1263 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 25.02.1999 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: France (Respondent) | Non-payment of purchase price | “According to Article 74 CISG, which provides that "damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach ..." and Article 78 CISG, which stipulates that "if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it", the [Buyer] shall pay the price and the interest to the seller. However, the Arbitration Tribunal does not accept the [Seller]'s calculation of interest based on the bank loan interest rate just because the [Seller] manages its business by bank loan. The Arbitration Tribunal deems that it is reasonable to calculate interest based on bank interest on deposit; therefore, the interest on payment in arrears is: US \$35,688.00 (price for the goods) × 4.93% (average annual interest rate) ÷ 12 months × 44 months = US \$6,451.20.” NOT CLEAR WHERE THIS AVERAGE ANNUAL INTEREST RATE APPLIES. VERY LIKELY THAT IT IS CHINA. (CREDITOR’S PLACE OF BUSINESS) |
| 73. | 878 (Arbitration) | Tribunal of International Commercial Arbitration | SELLER'S COUNTRY: United Kingdom | Non-payment of purchase price | „Second, the [Seller]'s claim to recover annual interest is based on Article 78 CISG. The rate of annual interest |

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| | | at the Russian Federation Chamber of Commerce and Industry Arbitration 25.01.2001 | (Claimant) BUYER'S COUNTRY: Russian Federation (Respondent) | | corresponds with the LIBOR rate for the short-term loans in hard currency in US dollars. [The LIBOR rate] represents a median rate applied by the leading U.K. banks (i.e., the banks in the place of the creditor)." (ACCORDING TO CLAIM = LIBOR) |
| 74. | 1569 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 25.10.2002 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Non-payment of purchase price | "(2) As to the [Seller]'s claim for interest, because the confirmation letter stipulates that the [Buyer] shall pay the amount of US \$21,000 to the [Seller] in August 2001, the Arbitration Tribunal holds that the [Buyer] shall pay the interest of the above amount of US \$21,000 from 1 September 2001 to the date when this award is made; the annual interest rate shall be 6%. (NO EXPLICIT RULE APPLIED) |
| 75. | 1591(Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 25.09.1998 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Non-payment of purchase price | "The [Buyer] shall pay to the [Seller] US \$94,420 plus interest at the annual rate of 6% from October 1997 to the date when the payment is actually made within 30 days after this award is handed down." (NO EXPLICIT RULE APPLIED) |
| 76. | 1536 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 26.07.2002 | SELLER'S COUNTRY: People's Republic of China (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Non-conformity, buyer partially claims money paid back | "The Arbitration Tribunal holds that the interest which the [Buyer] claimed is too high, and, according to the Supreme Court's Confirmation on the Methods to Calculate Delayed Paid Breach of Contract Damages (it took effect on 16 February 1999) and the Revision of The Supreme Court's Confirmation on The Methods to Calculate Delayed Paid Breach of Contract Damages (it took effect on 21 November 2000), the Arbitration Tribunal holds that the [Seller] shall pay the [Buyer] for the interest on the delayed payment which shall be calculated from 1 April 2000 to the date when the payment is actually made at the interest rate stipulated by the People's Bank of China for calculating the interest on delayed payment." (NO EXPLICIT RULE APPLIED) |
| 77. | 1217 (Arbitration) | China International Economic & Trade Arbitration Commission | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: | Non-payment | "Respondent should pay to the Claimant interest on the above of US \$95,180.72, which is US \$9,518.07 calculated at an annual rate of 5% from October 1996 to October 1998." |

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| | | (CIETAC) 26.11.1998 | People's Republic of China (Respondent) | | (ACCORDING TO CLAIM) |
| 78. | 881 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 27.02.2001 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: France (Respondent) | Non-payment of purchase price | <p>“Clause 6 of the General Terms of Delivery in the contract sets forth that the current Russian Federation laws shall govern their relationships. Pursuant to Article 15 of the Russian Federation Constitution and Article 7 of the Russian Federation Civil Code, international treaties of the Russian Federation are a component part of the Russian Federation legal system. Therefore, the relationships between the [Seller] and [Buyer] should be governed by the CISG. Issues not settled in the CISG should be governed by the Russian substantive laws as subsidiary law. Since Article 78 CISG does not set forth the interest rate for the use of another's funds, Articles 486(3), 395 and 823 of the Russian Federation Civil Code should apply.”</p> <p>(CHOICE OF LAW = CREDITOR'S PLACE OF BUSINESS)</p> |
| 79. | 779 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 27.07.1999 | SELLER'S COUNTRY: Switzerland (Respondent) BUYER'S COUNTRY: Russian Federation (Claimant) | Damages claim of buyer | <p>“The Tribunal granted the claim of the [buyer] to recover annual interest on the granted sum of lost profit at the LIBOR rate plus 2% per annum, on the basis of Article 78 CISG and Article 395 of the Russian Federation Civil Code that refers to the rate of bank loan at the place of creditor. The Tribunal found that the mentioned rate of interest accorded to the rate which prevailed in Switzerland (place of [buyer]'s company) respectively. The Tribunal has also taken into account that [seller] raised no objections regarding the issue of rate of interest”</p> <p>(ACCORDING TO CLAIM = CREDITOR'S PLACE OF BUSINESS)</p> |

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| 80. | 2079 (Arbitration) | Serbian Chamber of Commerce 27.05.2004 | SELLER'S COUNTRY: FYR Macedonia (Claimant) BUYER'S COUNTRY: Serbia (Respondent) | Non-payment of purchase price | <p>“Considering that the CISG does not set the interest rate, the arbitral tribunal assessed [Seller]’s request for domiciliary interest in the light of the previous practice of the Foreign Trade Court of Arbitration and the judicial practice of Serbian commercial courts, and decided to grant such request. On the basis of statistical data regarding the interest for Euro-denominated deposits (data from the European Central Bank and Euribor), the arbitral tribunal determined the interest rate and the domiciliary interest for the currency in which the debt is due.”</p> <p>(DOMICILIARY RATE OF THE CURRENCY)</p> |
| 81. | 1503 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 27.10.2005 | SELLER'S COUNTRY: Russian Federation (Respondent) BUYER'S COUNTRY: Turkey (Claimant) | Non-delivery, buyer claims money paid back | <p>“In its application for the clarification of the interest sum of 7 December 2004, the [Buyer] presented the calculation of the reduced interest sum accrued for the period starting from the date of the prepayment by the date of the arbitration hearing based on the reduced rate in the amount of 3.7% use of which reduced the amount of the claimed sum. In confirmation of the applied rate, the [Buyer] presented the publication from the "Komersant" newspaper of 14 September 2005 # 172 ("Marker" section) containing the information about the lending rates LIBOR in US dollars. The [Seller] has not presented any objections to the submitted calculation.”</p> <p>(INTEREST IN CASE OF RESTITUTION = NOT RELEVANT)</p> |
| 82. | 1856 (Arbitration) | Serbian Chamber of Commerce 28.06.2009 | SELLER'S COUNTRY: Serbia (Claimant) BUYER'S COUNTRY: Albania (Respondent) | Seller asks for the price | <p>“Therefore, the proposed rate has to be determined in accordance with the principles underlying the CISG. One of the main principles of the CISG is the principle of full compensation. However, another principle suggests that compensation should not put creditor in a better position than he would be had the contract been performed. [Seller]’s request is fully in line with the above-mentioned principles. In order to determine exact 'domicile' (Serbian) rate for euro, one should not resort to Serbian law, since it regulates and is appropriate for local currency (RSD) rates only and would result in overcompensation if applied to sums denominated in Euro. Rather, it is more appropriate to apply interest rate which is regularly used for savings, such as short-term</p> |

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| | | | | | deposits in the first class banks at the place of payment (Serbia) for the currency of payment, as this represents rate on a relatively riskless investment. After examining interest rate figures and indicators on short-term Euro deposits in Serbia, Sole arbitrator finds that the appropriate rate would be 6 percent annually.” (CREDITOR’S PLACE OF BUSINESS) |
| 83. | 1237 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 28.12.1994 | SELLER’S COUNTRY: Germany (Respondent) BUYER’S COUNTRY: Singapore (Claimant) | Non-conformity, damages | “... and 6% annual interest shall be added to the aforesaid sum” (NO EXPLICIT RULE APPLIED) “... The total amount the [Seller] shall pay to the [Buyer] is US \$84,731.702, which shall be paid before 31 January 1995; otherwise, an annual interest of 8% shall be added from 1 February 1995 to the date of actual payment.” (POST JUDGEMENT INTEREST) |
| 84. | 1704 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 28.05.2002 | SELLER’S COUNTRY: People’s Republic of China (Claimant) BUYER’S COUNTRY: United States (Respondent) | Non-payment | “The Arbitration Tribunal holds it is in conformity with the provisions of the United Nations Convention on Contracts for the International Sales of Goods for the [Seller] to calculate the interest at the annual interest rates respectively of 7.875% and 6.8125% on the basis of the respective contract amount of the 14 contracts as of November 30, 2001 for which it is supported by the Arbitration Tribunal.” (NO EXPLICIT RULE APPLIED) |
| 85. | 1513 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 28.05.2004 | SELLER’S COUNTRY: Egypt (Respondent) BUYER’S COUNTRY: Russian Federation (Claimant) | Restitution of price paid | “... the Tribunal regards the Egyptian substantive law as the applicable subsidiary law. According to the information available to the Tribunal from the foreign sources on the Egyptian substantive law regarding the amount of the annual interest rate in respect to pecuniary obligations, the debtor is obliged to pay to the creditor interest at the rate of 5 per cent. Therefore, the Tribunal concludes that the interest is to be calculated for the period indicated by the [Buyer] at the rate of 5 per cent.” (INTEREST IN CASE OF RESTITUTION = NOT |

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| | | | | | RELEVANT) |
| 86. | 885 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 28.11.2001 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Russian Federation (Respondent) | Seller asks for payment | “The Tribunal also found reasonable the claim of [Seller] to recover interest according to Art. 78 CISG and para. 352 of the German Commerce Code since it was supported by relevant calculations and thus should be granted.” (PIL = GERMAN LAW = CREDITOR’S PLACE OF BUSINESS) |
| 87. | 1582 (Arbitration) | Chamber of National and International Arbitration of Milan 28.09.2001 | SELLER'S COUNTRY: Cyprus (Claimant) REGISTERED OFFICE RUSSIA BUYER'S COUNTRY: Italy (Respondent) | Unpaid purchase price | “... The Tribunal, faced with the alternative choices allowed by Article 395 of the RF Civil Code, decides to take as a basis and parameter for its decision the average bank interest rate prevailing in the [Seller]'s country (Russia) on the date of presentation of the claim, such rate being the closest one to the rate applied to the Loan Agreement. The Tribunal, therefore, hereby fixes a rate of interest of 13% on the principal amount granted to the [Seller].” (PIL = RUSSIAN LAW = CREDITOR’S PLACE OF BUSINESS) |
| 88. | 1945 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 29.12.2006 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Russian Federation (Respondent) | Unpaid purchase price | “Since Article 78 of the CISG does not determine the rate of interest or the procedure for its recovery, pursuant to Article 7(2) of the Convention, the Tribunal turns to the subsidiary law, i.e., the German Commercial Code (GCC). Pursuant to Article 288 of the GCC, in the case of legal transactions to which a consumer is not a party, the rate of interest for claims for payment is eight percentage points above the basic rate of interest. Taking into consideration that the parties are commercial enterprises, this provision of the GCC is applicable to this dispute. The process of calculation of the basic rate of interest is established by 247 of the GCC. The calculations given by the [Seller] comply with the provisions of Articles 247 and 288 of the GCC. To confirm the effective basic rate of interest established by the Deutsche Bundesbank, the [Seller] provided corresponding information. The [Buyer] did not dispute the calculations of the amount of payment for the annual interest.” (PIL = GERMAN LAW = CREDITOR’S PLACE OF |

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| 89. | 1236 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 29.09.1994 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Seller claims rest of purchase price | <p>“The Arbitration Tribunal therefore concludes that the [Buyer] shall pay the remaining US \$7,135 to the [Seller] and interest of US \$835.09 calculated from 17 October to the day of the judgment at a 6% annual interest rate.”</p> <p>(NO EXPLICIT RULE APPLIED)</p> <p>“The [Buyer] shall pay RMB ___ to the [Seller] before 15 November; otherwise, interest calculated from 16 November 1994 to the day of actual payment at 9% annual interest rate shall be added.”</p> <p>(POST JUDGEMENT INTEREST)</p> |
| 90. | 1600 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 29.09.2004 | SELLER'S COUNTRY: Unavailable (Respondent) BUYER'S COUNTRY: People's Republic of China (Claimant) | Buyer claims damages for non-performance | <p>“The Arbitration Tribunal holds that the [Seller] shall pay the interest on the aforesaid RMB 1,091,640 calculated from 17 September 2002 to the day of actual payment. However, the interest rate alleged by the [Buyer], 7.56%, is too high, and the Arbitration Tribunal holds that 6% annual interest rate is reasonable.”</p> <p>(NO EXPLICIT RULE APPLIED)</p> |
| 91. | 1661 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.04.1997 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Buyer breached duty to accept goods and to pay for them, seller claims damages | <p>“The period of interest is from October 16 to November 10, and the total days are 25 days. The interest rate is 5/1000 /month (6% /year). The loss of interest = 156,000 x 5/1000 x 25/30 = US \$650.</p> <p>3. The loss of interest on the price difference The period of interest is from 10 November 1996 to 1 May 1997, and the total days are 170 days. The interest rate is 5/1000 /month (6% /year). The loss of interest on the price difference = 53,800 x 5/1000 x 170/30 = US \$12,534.35.”</p> <p>(NO EXPLICIT RULE APPLIED)</p> |
| 92. | 1238 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.08.1996 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | | <p>“The [Buyer] did not raise any objections to the calculation of the interest, and the Arbitration Tribunal deems that the [Seller]'s interest calculation is reasonable and objective. Therefore, the [Seller]'s claim for loss of interest of US \$372,109.30 should be accepted”</p> |

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| 93. | 1574 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.12.2002 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Luxembourg (Respondent) | Buyer breached duty to accept goods and to pay for them, seller claims damages | No interest awarded. Since the seller has gained money from the replacement sales. (NOT RELEVANT) |
| 94. | 1284 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 30.12.2003 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Russian Federation (Respondent) | Buyer did not pay purchase price | “Since CISG does not provide for the interest rate, it shall be determined in compliance with the subsidiary applicable law, that is, Russian law. It follows from the calculations submitted by the [Seller], that the interest-rate is determined by the [Seller] in accordance with art. 395(1) of the Russian Civil Code and taking into consideration the average interest-rate in the amount of 3% on the basis of a certificate issued by the Central Bank of Italy of 31 March 2003.” (PIL = RUSSIAN LAW = CREDITOR’S PLACE OF BUSINESS) |
| 95. | 1280 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.07.1996 | SELLER'S COUNTRY: People's Republic of China (Respondent) BUYER'S COUNTRY: United States (Claimant) | Seller did not perform, buyer claims damages | “... plus the interest on it calculated from 15 November 1994 to the date of actual payment at a 7% annual interest rate.” (NO EXPLICIT RULE APPLIED) |
| 96. | 882 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 30.07.2001 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Russian Federation (Respondent) | Buyer did not pay | “When reviewing the [Seller]'s claim to recover annual interest, the Tribunal considered the following circumstances. Pursuant to Article 78 CISG, if a party fails to pay the purchase price or any other sum, the other party is entitled to interest on it. Since Article 78 does not set forth the exact interest rate, then, as stated above, the law of Italy should apply.” (PIL = ITALIAN LAW = CREDITOR’S PLACE OF BUSINESS) |
| 97. | 1260 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Hong Kong | Buyer did not pay | “The [Seller] claims for interest on the price of the goods but fails to specify an interest rate. It is inferred from the interest amount claimed by the [Seller] that interest rate adopted by the [Seller] is 6.3 percent per annum, which is reasonable. So, the [Seller]'s claim for interest shall be granted.” |

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| | | 30.03.1993 | (Respondent) | | (NO EXPLICIT RULE APPLIED) “For any late payment, interest calculated at the monthly rate of 0.5 % will be added.” (POST JUDGEMENT INTEREST) |
| 98. | 1250 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.11.1998 | SELLER'S COUNTRY: United States (Respondent) BUYER'S COUNTRY: People's Republic of China (Claimant) | Avoidance: Buyer is claiming his money back | “The American Los Angeles ... Company should refund the price: US \$207,792, and pay 6% annual interest on this amount from 2 March 1992” (INTEREST IN CASE OF RESTITUTION = NOT RELEVANT) |
| 99. | 842 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 30.10.1991 | SELLER'S COUNTRY: United States (Respondent) BUYER'S COUNTRY: People's Republic of China (Claimant) | Buyer is claiming money paid back | “[Seller] shall return the payment of \$313,800.00 to [buyer] and, in addition, shall pay annual interest of 8% from the date when payment for the goods was made, October 10, 1990, to the date when the goods are returned, which shall be the date of this award” (INTEREST IN CASE OF RESTITUTION = NOT RELEVANT) |
| 100. | 1805 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 31.12.1999 | SELLER'S COUNTRY: P.R. China (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Seller asks for payment of price | “Within sixty days of the effective date of this award, [Buyer] shall pay to [Seller] the interest arising from the aforesaid amount of US \$545,000 at the rate of 7% per year calculated from 8 January 1999.” (NO EXPLICIT RULE APPLIED) |
| 101. | 1254 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 31.12.1999 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Seller asks for payment of the remaining price | “The [Buyer] should pay the price of US \$177,203.496 to the [Claimant] and the interest on this price from 11 January 1999 to the date of actual payment at the rate of 6% per year;” (NO EXPLICIT RULE APPLIED) |
| 102. | 120 (Arbitration) | Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft in Österreich Arbitration | SELLER'S COUNTRY: Austria (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Damages for lack of conformity | “Article 78 of the CISG, while granting the right to interest, is silent on the question of the applicable rate. In international writings and case law to date it is disputed whether the question is outside the scope of the Convention - with the result that the interest rate is to be determined according to the domestic law applicable on the basis of the relevant |

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| | | 25.06.1994 | | | <p>conflict-of-laws rules) - or whether there is a true gap in the Convention within the meaning of Article 7(2) so that the applicable interest rate should possibly be determined autonomously in conformity with the general principles underlying the Convention. This second view is to be preferred, not least because the immediate recourse to a particular domestic law may lead to results, which are incompatible with the principle embodied in Art. 78 of the CISG, at least in the cases where the law in question expressly prohibits the payment of interest. On of the general principles underlying the CSG is that of 'full compensation' of the loss caused (cf. Art. 74 of the CISG). It follows that, in the event of failure by the debtor to pay a monetary debt, the creditor, who as a business person must be expected to resort to bank credit as result of the delay in payment, should therefore be entitled to interest at the rate commonly practised in its country with respect to the currency of payment, i.e. the currency of the creditor's country or any other foreign currency agreed upon by the parties. The information received from the Deutsche Bundesbank is that the average 'prime borrowing rate' for US dollars in Germany in the period in question was 6.25 %. The interest due from the Respondent should be calculated at that rate.”</p> <p>(GENERAL PRINCIPLES OF CISG = CREDITOR’S PLACE OF BUSINESS)</p> |
| 103. | 121 (Arbitration) | <p>Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft in Österreich</p> <p>25.06.1994</p> | <p>SELLER’S COUNTRY: Austria (Respondent)</p> <p>BUYER’S COUNTRY: Germany (Claimant)</p> | | <p>“Article 78 of the CISG, while granting the right to interest, says nothing about the level of the interest rate payable. In international legal writings and case law to date it is disputed whether the question is outside the scope of the Convention - with the result that the interest rate is to be determined according to the domestic law applicable on the basis of the relevant conflict-of-laws rules - or whether there is a true gap in the Convention within the meaning of Article 7(2) so that the applicable interest rate should possibly be determined autonomously in conformity with the general principles underlying the Convention. This second view is to be preferred, not least because the immediate recourse to a particular domestic law may lead to results which are</p> |

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| | | | | | <p>incompatible with the principle embodied in Art. 78 of the CISG, at least in the cases where the law in question expressly prohibits the payment of interest. One of the general legal principles underlying the CISG is the requirements of 'full compensation' of the loss caused (cf. Art. 74 of the CISG). It follows that, in the event of failure to pay a monetary debt, the creditor, who as a business person must be expected to resort to bank credit as a result of the delay in payment, should therefore be entitled to interest at the rate commonly practiced in its country with respect to the currency of payment, i.e. the currency of the creditor's country or any other foreign currency agreed upon by the parties ... The information received from the leading Austrian banks is that the average 'prime borrowing rates' for US dollars and DM in Austria in the period in question were 4.5 % and 8 %, respectively. The interest due from the Respondent should be calculated at those rates."</p> <p>(GENERAL PRINCIPLES OF CISG = CREDITOR'S PLACE OF BUSINESS)</p> |
| 104. | 2231 (Arbitration) | <p>Serbian Chamber of Commerce Arbitration</p> <p>18.06.2008</p> | <p>SELLER'S COUNTRY: Serbia (Claimant)</p> <p>BUYER'S COUNTRY: Macedonia (Respondent)</p> | Purchase Price | <p>"Article 7(2) of the Contract provides that "in case [Buyer] does not pay the first or the second installment, [Seller] is entitled to claim interest on overdue payments, at the interest rate applicable in FYR Macedonia, from the day of reception of little chicken until the day on which the payment has been transferred to [Seller]'s account".</p> <p>(CONTRACTUAL PROVISION FOR INTEREST)</p> |
| 105. | 2123 (Arbitration) | <p>Yugoslav Chamber of Commerce</p> <p>09.12.2002</p> | <p>SELLER'S COUNTRY: Ukraine (Respondent)</p> <p>BUYER'S COUNTRY: Yugoslavia/Serbia (Claimant)</p> | Buyer asks for restitution of purchase price | <p>"That is why the sole arbitrator finds the application of the subsidiary solution necessary, i.e. to determine the applicable law based on conflicts of laws rules. On question of applicable law considering interests, the applicable law is the one relevant for payment itself which is the law of the creditor. According to the principle of full compensation, the creditor has the right to be compensated for the loss of use of money by application of such interest rate as he would be entitled to under the laws of his own country. [Buyer] was granted the interest rate of 6% until 2 March 2001 and starting from that date until payment at a</p> |

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| | | | | | domiciliary rate in accordance with the Law on Statutory Interest Rate. (CREDITOR'S LAW) |
| 106. | 2265 (Arbitration) | Serbian Chamber of Commerce 19.10.2009 | SELLER'S COUNTRY: Serbia (Claimant) BUYER'S COUNTRY: Macedonia (Respondent) | Damages | <p>“Consequently, determination of interest rates is determined pursuant to Article 7 paragraph 2, i.e. 'in conformity with the general principles on which [the Convention] is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.' Since the objective of the Vienna Convention, stated in the preamble, is the adoption of uniform rules which govern contracts for the international sale of goods and removal of the legal obstacles in international trade and promotion and development of international trade, Article 7 paragraph 2 offers the basis to determine the interest rate 'autonomously, in accordance with the general principles the Convention is based on' as stated in one arbitral award. ... Since this dispute is basically related to the claim for damages that the [Buyer] caused to the [Seller] by not returning the packaging, that the latter is entitled to pursuant to the Article 74 of the Vienna Convention, the sole arbitrator considers that, while deciding on this issue, he should be guided by the general principle upon which the Article 74 is based, i.e. the principle of full compensation for the loss suffered. The application of this principle is warranted in order to enable the aggrieved party to be in a situation it would have been in had there been no loss caused by the other party, and to benefit from the contract concluded with the other party. In the situation at hand, it could have been expected that the [Seller], in order to compensate for the unreturned packaging had to buy other packaging in order to continue its trading operations, and that for those purposes, in the ordinary course of business, it would have to take a loan. In consistence with that, in international trade the [Seller] is entitled to the interest rate equal to the average interest rate that applies to short-term loans for the currency in which the payment would be made, in the country where the [Seller] has its seat.”</p> <p>(GENERAL PRINCIPLES OF CISG = CREDITOR'S</p> |

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| 107. | 2266 (Arbitration) | Serbian Chamber of Commerce 04.06.2009 | SELLER'S COUNTRY: Serbia (Claimant) BUYER'S COUNTRY: Macedonia (Respondent) | Purchase Price | <p>“[Seller] did not determine the interest rate in its Statement of Claim, but rather indicated that it requests interest at the rate applied by the European Central Bank. In the absence of authorities which determine the interest rate that is to be applied on foreign currency debts, in accordance with the practice of this Arbitration, the Sole Arbitrator has concluded that the domiciliary interest rate for the EUR can be the rate at which the European Central Bank charges its clients for time deposits. The information regarding these interest rates is available on the internet at the following address www.euribor.org/html/content/euribor_data.html and represents the inter-bank interest rate for deposits in EUR. After examining this information, the Sole Arbitrator has determined the interest rate for each individual amount invoiced from the date the payments were due, as has been stipulated in point 2 of the operative part of this Award.”</p> <p>(DOMICILIARY RATE OF CURRENCY - EURIBOR)</p> |
| 108. | 2227 (Arbitration) | Serbian Chamber of Commerce 27.06.2009 | SELLER'S COUNTRY: Serbia (Claimant) BUYER'S COUNTRY: FYR Macedonia (Respondent) | Purchase Price | <p>The arbitrator took into account the arbitral practice in cases where the parties have not stipulated the applicable interest rate for the payment in foreign currency, which requires that in such case the rate to be applied in the calculation is the domicile interest rate of the country of the currency. Since the parties stipulated the payment in EUR - absent the agreement on the applicable interest rate - the Sole Arbitrator finds that applicable rate in the current case is the domicile interest rate of the European Central Bank, i.e. the interest rate paid for the deposits amounting to 3.30% annually, as stipulated in the European Central Bank Bulletin.</p> <p>(DOMICILIARY RATE OF CURRENCY - EURIBOR)</p> |

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| 109. | 2269 (Arbitration) | Serbian Chamber of Commerce 15.09.2008 | SELLER'S COUNTRY: Serbia (Claimant) BUYER'S COUNTRY: Macedonia and Kosovo (Respondent) | Purchase price | <p>“Therefore, default interest rate should correspond to the amount of the presumed damage the creditor suffered due to debtor's non performance of the contract. In the situation where the debtor does not meet its obligation of payment, it is to be expected that the creditor will compensate for the damage by obtaining a bank credit at an average interest rate for short-term loans in currency of the debt. In its Statement of Claim, the Claimant has requested interest at a discount rate of the European Central Bank [...]. Although the Claimant initially required interest from the day the debt became due, in its submission of 22 February it withdrew that claim, and is now demanding interest at the discount rate of the European Central Bank from the day of submitting the Statement of Claim. According to the national law, a discount interest rate is the basic or the lowest interest rate at which the issuing bank (the National Bank of Serbia) grants other banks credits, or at which it (the issuing bank) discounts bills and government securities. The arbitral tribunal has [...] established that the mentioned bank prescribes three different interest rates, none of which named as "discount interest rate". Instead, an interest rate named "Main refinancing operations rate" corresponds most closely to the concept of a discount interest rate. Therefore, the arbitration tribunal awarded this interest rate to the Claimant.</p> <p>(AUTONOMOUS INTERPRETATION = CREDITOR'S PLACE OF BUSINESS)</p> |
| 110. | 1711 (Arbitration) | China International Economic & Trade Arbitration Commission (CIETAC) 22.08.2005 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Damages claim of Seller | <p>CISG shall apply to this case; and matters not concerned with by the CISG or the contracts shall be governed by the Chinese laws, including the Contract Law and the General Rules of Civil Law....</p> <p>However, the currency used in the calculation table provided by the [Seller] is not in US dollars as stipulated in the contract but in Euro, and the interest lacks a bank's proof. Therefore, the Arbitration Tribunal does not sustain the final amount in the [Seller]'s calculation table. The interest shall accrue from the day when the [Buyer] should pay the contract price to the day when the contracts were avoided. ... According to various interest rates from 10 November 2000 to 31 May</p> |

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| | | | | | 2002 provided by Bank of China, the total amount of interest is US \$35,971 calculated as follows...” (PIL = Chinese Law = Debtor’s Law) |
| 111. | 1484 (Arbitration) | Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry Arbitration 27.12.2005 | SELLER'S COUNTRY: Russian Federation (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | The [Seller] is entitled to annual interest (art. 78 of the Convention), since [Buyer] is in arrears in payment for the basic outstanding sum (see art. 3 for support for this decision). [...] Evidently, from the materials presented by the [Seller] and his pleadings during the arbitral proceedings [Seller] is basing the claim for interest on art. 395 of the Civil Code of Russian Federation and calculates the requested amount based on the refinancing rate of the Central Bank of Russia. The Tribunal acknowledges that basing the terms of applying annual interest rate on the provisions of art. 395 of the Civil Code of the Russian Federation is correct, since art. 78 of the Convention does not regulate these terms and conditions. Consequently, national norms should be used as the subsidiary law, which in the present case is art. 395 of the Civil Code of Russian Federation. However, [Seller]'s calculations are based on the annual 13% refinancing rate of the Central Bank of Russian Federation, a rate which is applied only to rubles, as monetary means, and cannot be used for calculation of the interest rate on the indebtedness of the [Buyer], which is expressed in US dollars. The present finding of the Arbitral Tribunal corresponds to sec. 52 of the Resolution of the High Court of the Russian Federation and the High Court of Arbitration of the Russian Federation # 6/8 dated July 1, 1996 "On Some Issues Related to Application of Part 1 of the Civil Code of the Russian Federation", which states that: "In cases in which, according to the legislation on currency regulations and currency control, a monetary obligation is expressed in foreign currency (art. 317) and there is no official bank interest discount rate on currency credits for the day of usage of the monetary obligation at the creditor's place, the amount of interest rate is determined based on publications of the official sources of information on medium rates of bank interest in short term currency credits, given at the creditor's place. |

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| | | | | | <p>If no such publications exist, the amount of the interest rate is determined based on the creditor presenting as evidence a certificate, issued by one of the first class banks at creditor's place, showing the rate used by it for short term currency credits."</p> <p>(PIL = RUSSIAN LAW = CREDITOR'S LAW)</p> |
| 112. | 2233 (Arbitration) | <p>Serbian Chamber of Commerce Arbitration</p> <p>05.01.2007</p> | <p>SELLER'S COUNTRY: Serbia (Respondent)</p> <p>BUYER'S COUNTRY: USA (Claimant)</p> <p>(Wrong in the database)</p> | Refunding of purchase price which was paid in advance | <p>"Therefore, sole arbitrator determined the interest rate on the basis of the legislation in effect in the Republic of Serbia, as the Serbian law represents the applicable substantial law pursuant to the Law on Conflict of Laws with Regulations of Other Countries. ... In view of the fact that [Buyer] was the creditor of the claim denominated in a solid currency, in concreto in euro, sole arbitrator found that it was entitled to no more than the fixed monthly rate of 0.5%. This interpretation of the Law on the Default Interest Rate complies, beyond any doubt, with the core of the Law in question which under Article 3 provides that, in the case of absence of the rise in retail prices, the default interest is to be calculated solely by implementing the fixed monthly rate of 0.5%, in accordance, nevertheless, with the conform method."</p> <p>(INTEREST IN CASE OF RESTITUTION = NOT RELEVANT)</p> |
| 113. | 1647 (Arbitration) | <p>American Arbitration Association</p> <p>12.12.2007</p> | <p>SELLER'S COUNTRY: United States (Respondent)</p> <p>BUYER'S COUNTRY: Romania (Claimant)</p> | Buyer seeks damages with respect to the undelivered product under the Contracts | <p>"Taking into consideration both the contracts (made in U.S. dollars) and the applicable law -- here the domestic law of the United States pursuant to CISG Article 78 -- the Sole Arbitrator concludes that the Treasury Bill Rate is appropriate to apply from among those argued by the parties. Respondent's calculation of the prejudgment interest rate as 4.77% is accepted, and such interest is awarded as specified below."</p> <p>(PIL = US LAW = DEBTOR'S LAW)</p> |
| 114. | 1946 (Arbitration) | <p>Serbian Chamber of Commerce</p> <p>23.01.2008</p> | <p>SELLER'S COUNTRY: Serbia (Respondent)</p> <p>BUYER'S COUNTRY: Italy (Claimant)</p> | Damage claim of buyer | <p>"... As none of the abovementioned Principles and regulations determine the interest rate, but rather make it definable, and because as of March 2001 there is no law in Serbia to fix such a rate for claims in a foreign currency, in the determination of the interest rate the Arbitral Tribunal has</p> |

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| | | | | | <p>relied on the abovementioned principles as a safe indicator how to determine such a rate.</p> <p>Article 9.508 of the Ole Lando Principle, as well as Article 7.4.9 of the UNIDROIT Principles clearly address the "short term lending rate" which the Arbitral Tribunal has accepted as the method in which to determine the interest rate. Having in mind Article 2 paragraph 1 (m) of the UML on International Credit Transfers, by which interest is defined as a time value of the funds or money involved, which, unless otherwise agreed, is calculated at the rate and on the basis customarily accepted by the banking community for the funds or money involved, therefore for the Euro. The Arbitral Tribunal is only left to determine the average interest rate.</p> <p>In order to determine this, the Arbitral Tribunal, on its own initiative, acquired the Statistical Report of the European Central Bank for December 2007 (http://www.ecb.int) according to which it determined how the amounts of the interest rate (EURIBOR) have changed from the submission of the claim until the end of November 2007 - when the information was given to the Report. In the specified time period the interest rate of the Central European Bank was variable. The Arbitral Tribunal took as the most realistic interest rate for the time period from the submission of the claim until the end of November 2007, until the information existed, and determined the average interest rate of 4.62% - as stated in operative part of this Award under 1.”</p> <p>(DOMICILIARY RATE OF THE CURRENCY)</p> |
| 115. | 2354 (Arbitration) | <p>Serbian Chamber of Commerce</p> <p>10.11.2009</p> | <p>SELLER'S COUNTRY: Serbia (Claimant)</p> <p>BUYER'S COUNTRY: Bosnia and Herzegovina (Respondent)</p> | Outstanding price for delivered goods | <p>“Since the sole arbitrator considers that it is in the interest of promotion of international trade, to determine the interest rate in accordance with Article 7 paragraph 2 of the Vienna Convention, the [Seller] is entitled to the interest rate equal to the average interest rate that applies to short-term loans applied in the country of the currency in which the payment is arranged. Although in Serbia there is a possibility of obtaining short-term loans in Euros, commercial banks approve these under different conditions and with different</p> |

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| | | | | | <p>interest rates, depending on the conditions themselves, which makes its determination unreliable, therefore the sole arbitrator considers it would be more reliable to determine the interest rate based on the information published by the European Central Bank, relying on the practice in the countries of European Union where Euro is used as the method of payment/currency. Consequently, the [Seller] is entitled to the interest by the average interest rate that is applied to short-term loans in the member countries of European Union. According to the statistical bulletin of the European Central Bank available at the web page <http://www.ecb.europa.eu/press/pdf/mfi/mir0911.pdf> such average interest rate in September 2009 amounted to 3,36% on annual basis.”</p> <p>(DOMICILIARY RATE OF THE CURRENCY)</p> |
| 116. | 1034 (Arbitration) | <p>China International Economic & Trade Arbitration Commission Arbitration (CIETAC)</p> <p>08.03.1996</p> | <p>SELLER'S COUNTRY: Netherlands (Respondent)</p> <p>BUYER'S COUNTRY: People's Republic of China (Claimant)</p> | Damages | <p>“The Arbitration Tribunal rules that the annual interest rate shall be 6.5%. [...]”</p> <p>The Seller shall pay the above amounts to the Buyer within 45 days after the date of this award. If the time limit is exceeded, the interest thereupon shall be accrued based on 10% annual rate.”</p> <p>(NO EXPLICIT RULE / POST-JUDGEMENT INTEREST)</p> |
| 117. | 378 (Argentina) | <p>Juzgado Nacional de Primera Instancia en lo Comercial</p> <p>06.10.1994</p> | <p>SELLER'S COUNTRY: Spain and Czechoslovakia (two contracts) (Respondent)</p> <p>BUYER'S COUNTRY: Argentina (Claimant)</p> | Seller asks for payment of the remaining price | <p>“International business practices allow an annual interest rate of 12%, especially when there is an obligation in arrears and the parties have agreed, as a financing mechanism, an annual interest rate of 9%, as evidenced by the invoice. The Convention on Contracts for the International Sale of Goods done at Vienna on 11 April 1980, already mentioned, has been in force in the Czech Republic -- then Czechoslovakia -- since 1 April 1991 and is applicable to this case. Although the Convention does not state any interest rate, it does impose the application of international business practices, to which a higher hierarchy is ascribed over the very provisions of the Convention (article 9), which results in the admission of the</p> |

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| | | | | | requested interest rate.” (NO EXPLICIT RULE APPLIED - INTERNATIONAL BUSINESS PRACTICES?) |
| 118. | 2156 (Argentina) | Cámara Nacional de Apelaciones en lo Comercial 07.10.2010 | SELLER'S COUNTRY: India (Claimant) BUYER'S COUNTRY: Argentina (Respondent) | Indian seller wants purchase price paid | “In addition to the purchase price and other reimbursable expenses, both the trial court and the appellate court awarded interest for delay in payment (i.e., dilatory or "moratory" interest) in favor of the seller at the rate of 7% . The contract of sale was silent on the applicable rate, and neither the trial court nor the appellate court made explicit the considerations leading to the application of the 7% statutory rate.” (NO EXPLICIT RULE APPLIED) |
| 119. | 955 (Australia) | Supreme Court of Queensland-Court of Appeal 12.10.2001 | SELLER'S COUNTRY: Australia (Claimant) BUYER'S COUNTRY: Malaysia (Respondent) | | (NOT RELEVANT) |
| 120. | 859 (Australia) | Supreme Court of Queensland 17.11.2000 | SELLER'S COUNTRY: Australia (Claimant) BUYER'S COUNTRY: Malaysia (Respondent) | Buyer did not open the L/C; avoidance and damages | “ Interest at 9% from 30/9/96 to 17/11/2000.” (NO EXPLICIT RULE APPLIED) |
| 121. | 1783 (Austria) | Handelsgericht Wien 03.05.2007 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Austria (Respondent) | Buyer did not pay; payment + damages due to credit taking | “The [Seller] had been forced to take out a loan for the purchase price and the costs of the proceedings in the amount of EUR 34,000.00 at an interest rate of 9.5% due to the deliberate delay of payment of the [Buyer].” (INTEREST AS DAMAGES) |
| 122. | 2458 (Austria) | Oberlandesgericht Graz 13.06.2013 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Austria (Respondent) | Claim of seller for the payment of remaining purchase price | “Gemäß Art. 58 und Art. 59 in Verbindung mit Art.78 UN-Kaufrecht hat die Beklagte ab der Fälligkeit des Kaufpreises Verzugszinsen zu zahlen. Art. 78 UN-Kaufrecht enthält keine Regeln zur Höhe des Zinssatzes (Posch in Schwimann ³ Art 78 UN-Kaufrecht Rz 7). Damit gilt für den Zinssatz österreichisches Recht.” (AUSTRIAN LAW = DEBTOR'S LAW) |
| 123. | 757 (Belgium) | Rechtbank van Koophandel, Kortrijk | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: | Buyer did not accept the goods and did not pay | According to the court the delivery had taken place within a reasonable period and the buyer should have accepted delivery and was ordered to pay the price and interests. The seller did |

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| | | 03.10.2001 | Netherlands (Respondent) | | not prove that his General Conditions (on the invoice) were part of the contract. The Belgian legal interest rate was applied. (PROBABLY PIL SOLUTION = CREDITOR'S PLACE OF BUSINESS) |
| 124. | 1310 (Belgium) | Hof van Beroep, Antwerpen 04.11.1998 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | | The buyer ... was only entitled to reduction of the price. The Court held the seller properly reduced its price pursuant to Article 50 CISG. The Court ordered the buyer to pay the seller damages and interest under Article 78 CISG, in accordance with the relating provisions of the general conditions (CONTRACTUAL RATE) |
| 125. | 1055 (Belgium) | Hof van Beroep, Gent 08.10.2003 | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: France (Respondent) | Payment of price | "Declared the main claim of [Seller] acceptable and founded; main claim for payment of 17,311.05 by [Buyer] for delivery of textile according to invoice nr. 23 of 18 January 2000, plus interest at 7% from 9 March 2000 to the day of full payment, plus the costs of the proceedings" (ACCORDING TO CLAIM) |
| 126. | 361 (Belgium) | Rechtbank van Koophandel, Hasselt Belgium 09.10.1996 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | Loss suffered as consequence of breach | Recourse to average bank lending rate at creditor's place of business (ONLY ABSTRACT AVAILABLE, NO REFERENCE WHETHER THIS IS BY PIL RULES OR OTHER, BUT CREDITOR'S PLACE OF BUSINESS) |
| 127. | 1785 (Belgium) | Rechtbank van Koophandel, Qudenaarde 10.07.2001 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | Seller claims payment | "Article 78 CISG does not determine which interest rate is to be applied. The interest rate that is to be applied is either the legal interest rate of the place where the debtor has its residence or the rate under the law of the currency used. In both hypotheses, the legal interest rate in force in Belgium is to be applied (as the debtor - [Buyer] has its residence in Belgium and the currency of payment is Belgian)." (DEBTOR'S PLACE OF BUSINESS) |
| 128. | 1259 (Belgium) | Rechtbank van Koophandel, Hasselt 10.05.2006 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | Buyer has paid untimely, seller asks for interest | "... if internal law were to be applied to determine the interest, than this would have to be the law of the lex contractus, in this case Dutch law." DUTCH LAW APPLIES THE EU DIRECTIVE, THE AIM OF WHICH IS NOT SUITABLE FOR INTERNATIONAL TRANSACTIONS. THEREFORE |

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| | | | | | <p>“Learned authors are of the opinion that the concept has to be viewed in an international context and that the interest rate of the lex contractus (in this case Dutch law) should not be applied. We agree with learned authors who suggest applying the interest rate of the European Central Bank (ECB). In these circumstances the Court applies the interest rate of the marginal loan facility of the ECB, being $3.50 + 2 = 5.50\%$.”</p> <p>(DOMICILIARY RATE OF CURRENCY - EURIBOR)</p> |
| 129. | 747 (Belgium) | Rechtbank van Koophandel, Leper 18.02.2002 | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: France (Respondent) | Buyer did not pay | <p>“The buyer was ordered to pay the price and interest was granted according to the Belgian rate, since the payment currency was Belgian francs.”</p> <p>(DOMICILIARY RATE OF CURRENCY)</p> |
| 130. | 1786 (Belgium) | Rechtbank van Koophandel, Veurne 19.03.2003 | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: Netherlands (Respondent) | Buyer did not pay | <p>“The CISG, however, does not specify the interest rate. According to the literature, the term 'interest rate', as used in Article 78 CISG, should be interpreted in a transnational context. Both the Netherlands and Belgium are EU Member States and consequently have transposed or should have transposed the Directive [2000/35/EC] of 29 June 2000 on combating late payment in commercial transactions. The Court thus applies the interest rate foreseen therein, meaning a rate of 10% per year as determined hereafter.”</p> <p>(DOMICILIARY RATE OF CURRENCY)</p> |
| 131. | 1496 (Belgium) | Rechtbank van Koophandel, Hasselt 20.09.2005 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Belgium (Respondent) | Buyer did not pay | <p>The [Seller] is entitled to interest on arrears (art. 78 CISG). A formal notice is not required for the running of the interest. The [Seller] claims interest at a rate of 12 %. ... Art. 78 does not determine the interest rate that should be applied. Since the interest must be considered as a compensation for the damage caused by late delivery, the legal interest, applicable in the country of the seller, must be applied, as the damage of the seller consists of that lost interest.”</p> <p>(LAW OF CREDITOR)</p> |
| 132. | 831 (Belgium) | Rechtbank van Koophandel, Hasselt 25.02.2004 | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: Netherlands (Respondent) | Unpaid purchase price | <p>“Articles 74 and 78 of the Vienna Sales Convention provide for the principle of damages and interest charged on sums in arrears without determining the applicable interest rate. In this regard, the [Seller] can rely on the lex contractus. The [Seller]</p> |

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| | | | | | <p>was to perform the most characteristic performance and the parties have not agreed on the applicable law. One can therefore assume that the applicable law is Belgian law, which implies that the [Seller] justly invokes the Act of 2 August 2002, specifically addressing arrears of payment in commercial transactions.”</p> <p>(PIL LAW = CREDITOR’S PLACE OF BUSINESS)</p> |
| 133. | 1258 (Belgium) | <p>Hof van Beroep, Antwerpen</p> <p>24.04.2006</p> | <p>SELLER'S COUNTRY: Belgium (Claimant)</p> <p>BUYER'S COUNTRY: Germany (Respondent)</p> | <p>Avoidance by seller, damages claim</p> | <p>“According to article 78 CISG, interest is due in case of late payment and interest commences to run without the need for an order. Since the interest rate is not determined by the CISG, it is determined by the lex contractus, in casu Belgian law.</p> <p>The CISG does not forbid that the parties determine conventional interest. Moreover, article 6 CISG allows the parties to determine the damages themselves.</p> <p>According to Belgian law, the conventional interest claimed by the [Seller] on the basis of article 5 of [Seller]'s general conditions -- that are deliberately reduced to 9 % -- are certainly not exaggerated. Thus, the claimed interest rate of 9 % is applied.”</p> <p>(CONTRACTUAL RATE)</p> |
| 134. | 1885 (Belgium) | <p>Rechtbank van Koophandel, Hasselt</p> <p>03.10.2007</p> | <p>SELLER'S COUNTRY: Germany (Claimant)</p> <p>BUYER'S COUNTRY: Belgium (Respondent)</p> | <p>Damages</p> | <p>“A German seller and a Belgian buyer concluded a contract for sale of clothes. The seller delivered the goods, but the buyer failed to pay the invoices. Relying on the application of Belgian law, the seller brought an action against the buyer, claiming for damages plus interest at the interest rate of 11%. First of all, the Court held that CISG was to be applied, since both Belgium and Germany are Contracting States (Art. 1(1)(a)). As to the merits, the Court held the seller entitled both to damages (Art. 74 CISG) and interest (Art. 78 CISG). After recalling that Art. 78 CISG does not determine the applicable rate and after pointing out that such an issue requires an international solution under CISG, the Court found it reasonable to apply the interest rate fixed by the European Central Bank (7%).”</p> |

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| | | | | | (DOMICILIARY RATE OF THE CURRENCY) |
| 135. | 1506 (China) | Wuhan Intermediate People's Court of Hubei Province 04.04.2001 | SELLER'S COUNTRY: Republic of Korea (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Unpaid purchase price | “The [Buyer] shall pay US \$400,000 to the [Seller] and the interest on the aforesaid delayed payment (calculate from 6 November 1996 to the day of actual payment based on bank loan interest rate on US dollars at the same time. This interest shall be paid within ___ after being exchanged into RMB).” (NO EXPLICIT RULE APPLIED) |
| 136. | 1383 (China) | Beihai Maritime Court, Guangxi Zhuang Autonomous Region 05.03.2002 | SELLER'S COUNTRY: Hong Kong, China (Respondent) BUYER'S COUNTRY: Singapore (Claimant) | DAMAGE CLAIM BUYER | “[Seller] shall compensate [Buyer] US \$ 550,000, i.e., the losses of freight, dead freight, demurrage and transportation fee, and pay interest at the contemporary lending rate of the liquid capital promulgated by the People's Bank of China from 26 September 2001 to the payment date; (DEBTOR's PLACE OF BUSINESS) |
| 137. | 1384 (China) | Higher People's Court of Shandong Province 10.09.2004 | SELLER'S COUNTRY: People's Republic of China (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Goods were defective; contract is avoided. Restitution + Damages | “2. [Seller] shall return US \$172,125 for the price of the goods and the interest thereon (from the day of the payment to the day of this judgment at the bank loan interest rate set by the People's Bank of China at that time); 3. [Seller] shall pay the [Buyer] the bank procedure fee of 735.84 EUR, transportation fee of 13,982.85 EUR, port cost of 805.56 EUR, inspection fee of 2,668 EUR, container cleaning fee of 679EUR, storage fee and destroying fee of 25,438.8 EUR, and container demurrage charge of 797.68 EUR; 4. [Seller] shall pay the interest on the aforesaid sum (from the payment date to the day of this judgment following the loan interest rate set by the People's Bank of China at that time);” (DEBTOR's PLACE OF BUSINESS) |
| 138. | 1499 (China) | Wuhan Intermediate People's Court of Hubei Province 11.05.2004 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Hungary (Respondent) | Non-payment of sales price | “[Buyer] shall pay interest on the aforesaid delayed payment (calculated from 1 January 1999 to the day of the effective date of this award) based on the bank interest rate at the place of making payment, i.e., the bank loan interest rate on US dollars of the Bank of China at that time.” (PLACE OF PAYMENT = CREDITOR'S PLACE OF BUSINESS) |
| 139. | 1604 (China) | Xiamen Intermediate People's Court | SELLER'S COUNTRY: Hong Kong (Claimant) | Non-payment of sales price | “According to Articles 16, 18, 19, 23, 32 and 34 of the Law of the People's Republic of China, and Articles 74 and 78 of the |

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| | | 20.04.1993 | BUYER'S COUNTRY: People's Republic of China (Respondent) | | CISG, on 20 April 1993 the Court ruled as follows: 1. The [Buyer] should pay the [Seller] the remaining 20% of the contract price, totalling US \$319,095, plus interest, within 15 days of the effective date of this ruling. Interest should be calculated at the export foreign currency rate of Po Sang Bank (Hong Kong) from 1 August 1989 to the day when the payment was actually made. 2. The [Buyer] should compensate the [Seller] for the loss of anticipated profits for the 2,000 tons of fish powder, totalling US \$21,000, plus interest, calculated at the annual US dollar deposit rate of 10.4375% from 1 September 1989 to the day when the payment is actually made.” (CREDITOR'S PLACE OF BUSINESS) |
| 140. | 1381 (China) | Shanghai No. 1 Intermediate People's Court 22.06.1998 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Non-payment of sales price | “According to Article 142 of the General Principles of the Civil Law of the PRC and Articles 53, 74, 78, 85, and 88(1) and (2) of the CISG, the court rules after deliberation that: 1. The [Buyer] shall pay the [Seller]'s loss of price for the goods of 83,934.10 DM within ten days of this award; 2. [Buyer] shall pay the [Seller]'s loss of interest on the price of 10,072 DM within ten days of this award;” (NO EXPLICIT RULE APPLIED) |
| 141. | 1497 (China) | Shanghai No. 1 Intermediate People's Court 23.03.2004 | SELLER'S COUNTRY: Singapore (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Non-payment of sales price | “The [Buyer] should have made payment for the goods. Thus, in accordance with Article 24 of the Law of Civil Procedure of the PRC, Article 145(2) of the General Principles of Civil Law of the PRC, Articles 126(1) and 402 of the Contract Law of the PRC, and Articles 53 and 78 of the CISG, the court makes the following award: 1. [Buyer] shall pay to the [Seller] US \$246,999 and interest on it within ten days of the effective date of the award (with the interest calculated based on the US dollar bank loan interest rate of the Bank of China at the same time to the day of actual payment” (PIL = CHINESE LAW = DEBTOR'S LAW) |
| 142. | 1656 (China) | Shanghai No. 1 Intermediate People's Court | SELLER'S COUNTRY: People's Republic of China (Claimant) | Non-payment of purchase price | “The [Seller] had performed its duty of delivery, so the [Buyer] should pay the contract price and interest on the outstanding amount. Therefore, according to Article 53 and Article 78 of |

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| | | 29.06.2005 | BUYER'S COUNTRY: United States (Respondent) | | CISG, the Court handed down the following ruling: 1. The [Buyer] shall pay the [Seller] the contract price of US \$148,871.60 and interest (at the US dollar loan rate of the Bank of China at the same time; regarding US \$46,211.60, the interest from 1 October 2004 to the day when the actual payment is made; regarding US \$20,000, the interest from 1 November 2004 to the day when the payment is actually made; regarding the US \$82,660, the interest from 1 December 2004 to the day when the payment is actually made) within ten days after the ruling takes effect; 2. The [Buyer] shall pay the [Seller] for the hanger price of RMB 18,270 and interest (at the loan rate of the People's Bank from 1 October 2004 to the day when the actual payment is made);” (CREDITOR’S PLACE OF BUSINESS) |
| 143. | 1615 (China) | Shangai Higher People’s Court 30.08.2005 | SELLER'S COUNTRY: Singapore (Claimant) BUYER'S COUNTRY: People's Republic of China (Respondent) | Non-payment of sales price | “Based on the above reasons and according to Article 8 of the Contract Law of the People's Republic of China, and Article 53 and Article 78 of CISG, the Court of First Instance handed down the following judgment: (1) The [Buyer] should pay the [Seller] the contract price of US \$150,849 plus interest (calculated at the US dollar loan interest rate at the same time from 1 October 2003 to the day when the payment was actually made;” (NO EXPLICIT RULE APPLIED) |
| 144. | 972 (China) | Fujian Higher People’s Court 31.12.1996 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: Hungary (Respondent) | Non-payment of purchase price | “According to Article 16 and Article 23 of the Foreign Economic Contract Law of the PRC [6], the Court of First Instance concluded that: 1. [Buyer] shall pay [Seller] U.S. \$91,800 together with interest (at the rate of the current People's Bank of China's US dollar loan rate, and calculated from 10 November, 1994 to the day of its payment) within ten days of the effectiveness of the judgment. “ (CREDITOR’S PLACE OF BUSINESS) |
| 145. | 869 (Finland) | Käräjäoikeus of Kuopio 05.11.1996 | SELLER'S COUNTRY: Turks and Caicos Islands [seller] / Finland [seller's | Seller did not deliver, avoidance, | “It is the estimate of the Court, that K should have pre-estimated that the interest loss resulting from not fulfilling the contractual obligations could be about 10% of the sale price, |

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| | | | CEO] (Respondents) BUYER'S COUNTRY: Lithuania (Claimant) | restitution of money + damages | meaning U.S. \$8,000. The amount of lost profit announced by the seller, namely 20%, the Court sees as reasonable. The butter consignment bought by the buyer has had a buyer. The interest on arrears is the currently enforced interest rate of the Bank of Finland added with 7% for U.S. \$53,716, beginning from one month after the issuance of judgment onwards and 16% for U.S. \$15,960 beginning from 20 March 1995. The said amounts can be paid either with U.S. dollars or Finnish Marks according to the exchange rate of the date of payment.” (NO EXPLICIT RULE APPLIED – POST-JUDGEMENT INTEREST RATE) |
| 146. | 660 (Finland) | Turku Court of Appeal 12.04.2002 | SELLER'S COUNTRY: Finland (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Restitution of sum paid | “As a consequence of the fact that the parties have not agreed on the applicable law, it is decided that, according to the above mentioned principles, when evaluating the conclusion of the contract, its fairness, possible mediation and the interest rate, Finnish law is applicable.” “[Buyer] has demanded interest for the return payment. Because of the fact that the claim is based on a mistaken payment and the benefit derived from such a payment, according to the Finnish law on interest, interest accrues only after one month from the presentation of the claim onwards. Therefore, [buyer] is entitled to legal interest from 17 March 1997 onwards - one month after [seller] was served with summons.” (INTEREST IN CASE OF RESTITUTION = NOT RELEVANT) |
| 147. | 156 (France) | Cour d'appel de Grenoble 29.03.1995 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Spain (Respondent) | Buyer did not pay the full price | “Orders [buyer] to pay [seller] f 101,825.50 in principal, plus interest on the overdue payments as of right, to be calculated from the day after the invoices should have been paid; Decides that the interest will be compounded from 2 May 1994, until one full year shall have run;” (NO EXPLICIT RULE APPLIED – COMPOUND INTEREST ACCEPTED) |
| 148. | 2284 (France) | Tribunal Cantonal Vaud 05.02.2007 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: | Rest of purchase price | Under Art. 78 CISG, if a party fails to pay the price or any other sum due, the other party is entitled to interest on this sum, without prejudice to damages that would be founded on a request under Art. 74 CISG. In accordance with Art. 7 para. 2 |

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| | | | Switzerland (Respondent) | | <p>CISG, the applicable law to the interest rate shall be determined the rules of private international law. By reference to Art. 118 PIL, it must be based on Art. 3 para. 1 of the Convention of 15 June 1955 on the international sale of goods (SR 0.221.211.4) which requires that in default the law declared by the parties is applicable, the sale is governed by the national law of the seller's habitual residence at the time when the order was received. In the present case, PIL denote the French law for the determination of the rate of interest within the meaning of Article 78 CISG.</p> <p>(PIL = French Law = Creditor's law)</p> |
| 149. | 1228 (Germany) | Landgericht Saarbrücken 01.06.2004 | SELLER'S COUNTRY: Poland (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | <p>"In any case, the statutory rate of interest of the legal system that applies according to the rules of private international law of the forum to those legal issues not covered by the UN Sales Law, is decisive. In this regard, the Polish legal system is decisive according to Art. 28(2) EGBGB [*]. The contract has the closest connection to Poland, as the [Seller], who is located in Poland, undertook the characteristic performance (delivery of the goods). According to Art. 481 § 2 Polish Civil Code in conjunction with the Cabinet Regulation to Determine Statutory Default Interest dated 10 March 1989 in the version dated 15 December 2001, value amounts attract interest at a rate of 8% p.a."</p> <p>(PIL = POLISH LAW = CREDITOR'S LAW)</p> |
| 150. | 108 (Germany) | Oberlandesgericht München 02.03.1994 | SELLER'S COUNTRY: Sweden (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | <p>"The claim for interest is based on Art. 78 CISG, since the [buyer] failed to pay the purchase price due under Art. 58 CISG. Following Art. 28(2) sent. 1 EGBGB, the rate of interest is determined by Swedish law, as the [seller]'s obligation is the one characteristic of a sales contract. Under Swedish law, the [seller] is entitled to interest at a rate of 8 % on top of the discount rate of the Swedish State bank, par. 6 Räntelag (1975: 635)"</p> <p>(PIL = SWEDISH LAW = CREDITOR'S LAW)</p> |
| 151. | 1416 (Germany) | Landgericht Heidelberg | SELLER'S COUNTRY: Poland (Claimant) | Purchase price not paid | <p>The Court adheres the position which favours a special link to the law that applies at the place of business of the debtor. It</p> |

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| | | 02.11.2005 | BUYER'S COUNTRY: Germany (Respondent) | | seems convincing to the Court that the debtor operates with the money by profitably investing the sum to which the creditor is entitled in its own country instead of paying the sum to the creditor as required by the contract. Consequently, a special link must be drawn to that law which is applicable at the place of business of the debtor. Therefore, German law is applicable, meaning that the interest rate follows from § 288(1) BGB [*]. With regard to the partial sum of EUR 5,083, the corresponding claim became mature with service of the judicial reminder on 20 November 2003 at the latest. (DEBTOR'S PLACE OF BUSINESS) |
| 152. | 38 (German) | Landgericht Heidelberg 03.07.1992 | SELLER'S COUNTRY: U.S.A. (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | “The claim for interest is based on CISG Art. 78. To be sure, this provision does not regulate the amount of the interest rate. In accordance with the majority opinion, this is to be ascertained in accordance with the private international law of the State in which the proceedings take place, and therefore in accordance with the substantive law of the State that would be applicable if the CISG was not applicable. In the case at hand, it has to be assumed that the parties have chosen the law of the State in which the [Seller] has its place of business. It is furthermore to be proceeded on the assumption that there is no valid interest rate below 4 % in the State of Massachusetts, U.S. The starting point of time for the payment of interest results from the expiration of the time allowed for payment on 21 February 1992.” (PIL = USA LAW = CREDITOR'S LAW) |
| 153. | 193 (Germany) | Landgericht Landshut 05.04.1995 | SELLER'S COUNTRY: Germany (Respondent) BUYER'S COUNTRY: Switzerland (Claimant) | Purchase price is claimed back. | “...they have chosen German law. This contract regarding the choice of law has been validly concluded under Art. 27(4) EGBGB. Thus, the provisions of the German law apply. The rate of 11.5 % interest was disputed. As the [buyer] has not proven [the interest rate], the legal provisions apply. According to § 352 I HGB, the legal interest rate is 5% for mutual commercial transactions. Both [buyer] and [seller] are merchants in accordance with § 1 II no. 1 HGB. The conclusion of the sales contract at issue is part of the commercial business of both parties, § 343 HGB. Thus, the rate of interest is 5%.” |

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| | | | | | (CHOICE OF LAW) |
| 154. | 381 (Germany) | Oberlandesgericht Hamm 05.11.1997 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | <p>“ The CISG does not fix the applicable interest rate. According to unanimous opinion and the case law of this Court, the interest rate is to be settled in conformity with the law applicable by virtue of the rules of private international law. Therefore, the interest rate is to be determined under Italian law, because the seller's performance is the characteristic performance of a sales contract. ... Under Italian law, the legal interest rate has been at 10 % since 16 December 1990. The [seller] does not seek a higher rate. The [buyer] did not object to the dates from which the [seller] requests interest.“</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |
| 155. | 173 (Germany) | Landgericht Berlin 06.10.1992 | SELLER'S COUNTRY: Italy (Claimant is assignee of Italian seller) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | <p>“The claim for interest is based on Articles 59, 74 and 78 of the CISG in connection with Article 1284, Section 1 of the Italian Civil Code. Following these provisions, [seller's assignee] is entitled to interest from the time the claim was mature without prejudice to any further claim for damages. As to this matter, the [buyer] did not dispute the submission of [seller's assignee] that [seller's assignee] takes credit exceeding the amount of the claim at an interest rate of 23%.”</p> <p>(NO EXPLICIT REFERENCE TO PIL PROVISIONS, BUT ITALIAN LAW APPLIED = CREDITOR'S LAW)</p> |
| 156. | 162 (Germany) | Amtsgericht Kehl 06-Oct-1995 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price not paid | <p>“Since Art. 78 CISG does not provide for an interest rate, the matter is to be settled in conformity with the law applicable by virtue of the rules of German private international law ... Therefore, Italian law governs the obligation to pay the purchase price under Art. 28(2) EGBGB [German Code on Private International Law], and it also applies to the accompanying claim for interest. Pursuant to Article 1284 Cc [Italian Civil Code], the interest rate is 10% since 16 December 1990”</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |
| 157. | 560 (Germany) | Landgericht Darmstadt 09.05.2000 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: France (Respondent) | Purchase price not paid | <p>“The Court thus orders the [buyer] to pay the purchase price. The [seller]'s claim for interest results from Art. 78 CISG in connection with § 352 HGB. Under Art. 78 CISG, the [seller] is entitled to interest on any sum that is in arrears. As the CISG</p> |

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| | | | | | <p>does not stipulate the interest rate, the rate is to be determined according to the law applicable by virtue of the rules of private international law. Since the parties did not agree on a choice of law clause, the law governing the contract is the law of the [seller]'s place of business. This law supplements the CISG. Regardless of how the interest rate is being determined, the re-financing of a businessperson at an interest rate of 5% can be assumed in the Federal Republic of Germany and a return of 5% on an amount of one million DM cannot seriously be questioned. Such a return neither requires specific knowledge nor risky transactions. As the [seller] did not prove a higher loss resulting from bank loans, its claim for interest was reduced by the Court to the 5% stipulated by § 352 HGB, owed from the date of the [buyer]'s final payment refusal on 1 February 1999.”</p> <p>(PIL = GERMAN LAW = CREDITOR’S LAW)</p> |
| 158. | 114 (Germany) | Landgericht Oldenburg 09.11.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“The [seller] is entitled to interest under Art. 78 CISG. As the CISG does not regulate the interest rate, reference is to be made to the national law to be determined by the EGBGB (OLG Frankfurt, NJW 94, 1013; Schwenzler, NJW 90, 602, 606 et seq.). In this case, with an Italian seller, Italian law applies (OLG Frankfurt, op.cit.). The [seller] has not shown that it suffered losses higher than the legal interest rate of 10 % that applies in this case.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 159. | 115 (Germany) | Oberlandesgericht Düsseldorf 10.02.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“The interest granted by the District Court at a rate of 5 % from 27 November 1992 (date of service of the claim), the amount of which is not disputed by the [buyer], is founded under Art. 78 CISG in connection with § 352 HGB and § 291 BGB. Under Art. 78 CISG, if the buyer fails to pay the purchase price, the seller is entitled to interest on it. The interest rate is not provided for in the Convention, but is to be settled in conformity with the law applicable by virtue of the rules of private international law. As both parties rely on German law for the legal dispute, they have formed an implicit agreement on the applicability of German law (Art. 27(1) sent. 2 EGBGB). The [buyer] is therefore obliged to render the</p> |

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| | | | | | commercial interest rate of 5% from the time of the service of the claim (§ 352 HGB, § 291 BGB).” (CHOICE OF LAW) |
| 160. | 116 (Germany) | Oberlandesgericht Düsseldorf 10.02.1994 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | “Within the scope of the main claim, to which the [seller] is entitled, it is at any rate entitled, under CISG Art. 78, to interest for the asserted period of time. In this regard, the interest rate is calculated under French law, which, according to the contract and EGBGB Arts. 28(1) and (2), applies to the contract at issue.” (PIL = FRENCH LAW = CREDITOR’S LAW) |
| 161. | 755 (Germany) | Amtsgericht Viechtach 11.04.2002 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Slovakia (Respondent) | Purchase Price not paid | “ The [seller] is entitled to interest on the purchase price at a rate of 12% under Art. 78 CISG. According to Art. 58(1) sent. 1 CISG, payment was due when the goods were delivered on 11 July 2001. The [buyer] had to pay the price on that day without the need for another period of time to pass or a reminder of payment (Art. 59 CISG). The Court therefore grants interest from 4 August 2001, as requested. Since the [buyer] did not dispute the interest rate submitted by the [seller], the Court grants the requested rate of 12%.” (ACCORDING TO CLAIM) |
| 162. | 1220 (Germany) | Landgericht Hamburg 11.06.2003 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: France (Respondent) | Purchase Price not paid | “The claim for interest relating to this follows from §§ 284(3), 288(1) BGB in the version which was effective until 31 December 2001, which is authoritative here, according to Art. 229 § 5 sentence 1 EGBGB and which specifies the interest claim under Art. 78 CISG. According to this, interest at 5 percentage points above the base rate is to be paid in case of a monetary debt during the delay. According to [Seller]’s conclusive assertion, the purchase price claim was due, in default of another agreement, on 1 June 2001 and a corresponding invoice was handed over. Thus [Buyer] was in arrears as of 1 July 2001.” (PIL = GERMAN LAW = CREDITOR’S LAW) |
| 163. | 310 (Germany) | Oberlandesgericht München | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: | Purchase Price not paid | “4. The claim for interest is justified only for a rate of 5% according to §§ 352, 353 HGB, because German law is the applicable law supplementing the CISG (see above at 2.)” |

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| | | 11.03.1998 | Germany (Respondent) | | (CHOICE OF LAW) |
| 164. | 170 (Germany) | Amtsgericht Alsfeld 12.05.1995 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“[Seller] is entitled to interest of only 10 % on the principal claim. According to Art. 78 CISG, the buyer owes interest if he fails to pay the price. The punctuality of the payment goes by Arts. 58, 59 CISG in connection with the sales contract concluded by the parties. According to the content of the sales contract, the purchase price was to be paid net at the latest within 30 days. This results from the invoice of 5 March 1993. The parties did not submit another agreement concerning the payment date. The interest rate is governed by Italian law as it is not regulated in the CISG, Art. 7 CISG, Art. 28 EGBGB. Since 1990, the compulsory interest rate in Italy is 10 % , Art. 1284 Codice civile.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 165. | 400 (Germany) | Amtsgericht Koblenz 12.11.1996 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“Because Article 78 does not define the applicable rate of interest, Article 28 EGBGB leads to the application of Italian law. According to Article 128 of the Italian Civil Code, the statutory interest rate starting from 16 December 1990 is 10%. Nevertheless, the [seller] is entitled to the higher interest rate of 16.5% he requested. Article 78 does not exclude the possibility to demand reimbursement under Art. 74 CISG for losses suffered through a bank credit at a higher rate than the statutory interest rate. In the parallel proceeding before the AG Bottrop [Germany], the [seller] submitted a bank certificate which proves that he is taking credit from his house bank in amounts exceeding the purchase price at an interest rate of at least 16.5%. The [seller] is therefore entitled to interest at the rate of 16.5% regarding the invoice of ...”</p> <p>(INTEREST RATE OF THE BANK LOAN)</p> |
| 166. | 1402 (Germany) | Landgericht Bamberg 13.04.2005 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“The obligation to pay interest is generally governed by Art. 78 CISG. However, there is no provision on the interest rate itself. [...] b) It is in dispute which provisions are applicable to determine the interest rate, as the CISG itself does not govern this issue. While recourse is often made to the domestic law applicable in</p> |

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| | | | | | <p>accordance with conflict of laws rules at the forum, others prefer recourse to general principles in favor of a unified solution. The Court hereby adheres to the solution engaging a uniform standard which establishes a link to the notion of adjustment of profit and which determines the interest rate according to the usual interest rates applied at the habitual residence of the debtor. Consequently, the interest rate follows from § 288 BGB. The statutory interest rate is laid down in accordance with § 288(1)(1) BGB (old version), which applies pursuant to Art. 229 § 1(1)(3) EGBGB”</p> <p>(PLACE OF BUSINESS OF DEBTOR)</p> |
| 167. | 1219 (Germany) | Oberlandesgericht Köln 13.02.2006 | SELLER'S COUNTRY: Italy (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Purchase Price not paid | <p>“3. The claim for interest is based on Art. 78 CISG and, regarding its extent, on Art. 1284(1) sentence 2 Cc in conjunction with the Ministerial Decree of 11 December 2000.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 168. | 23 (Germany) | Landgericht Frankfurt am Main 16.09.1991 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“Since the rate of interest was not stipulated under CISG, Article 78, according to German international private law the rate of interest on the claim for the purchase price is governed by French Law. Referring to the predominant legal opinion, the legal rate applicable to money claims at the seller's domicile determines the interest rate pursuant to CISG, Article 78. . . . A deviating opinion is given by [the commentator] Stoll, according to whom the amount of interest has to be determined under the domestic law of the debtor. He argues that the duty to pay interest aims at preventing the debtor from deriving advantage by withholding sums due and investing the money [rather than paying the amount owed]; on the other hand, [others argue] that interest is given as compensation to the creditor, in the amount proper under the domestic law of the seller's country. The court, however, need not decide [which law determines the interest rate] because it does not affect the outcome of the case. ”</p> <p>(PIL = FRENCH LAW = CREDITOR’S LAW)</p> |
| 169. | 1620 (Germany) | Landgericht Berlin | SELLER'S COUNTRY: Germany (Respondent)? | Damage claim since goods | <p>“In respect to the interest, the Court assumes that national law is to be applied according to Article 78 CISG. The domicile of</p> |

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| | | 13.09.2006 | BUYER'S COUNTRY: France (Claimant)? | were not conform, loss of profit | the obligor is decisive in this respect. § 288(2) BGB is thus applicable. The [Seller] defaulted at the latest at the time it finally refused payment according to § 286(2) No 3 BGB.” (DEBTOR’S PLACE OF BUSINESS) |
| 170. | 259 (Germany) | Amtsgericht Nordhorn 14.06.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | “As the [buyer] failed to make an according submission, the interest was granted according to the [seller]'s request. The legal interest rate in Italy is 10% pursuant to Art. 1284 Codice civile [Italian Civil Code].” (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 171. | 46 (Germany) | Amtsgericht Zweibrücken 14.10.1992 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | “The interest claim is founded on Art. 78 CISG in conjunction with Art. 28 EGBGB and Art. 2184 Codice civile of Italy. It is not necessary that [Buyer] is in arrears with payment. It is merely required that the underlying claim has become mature. The applicable interest rate is not governed by the CISG. It must be geared to the interest rate applicable under the respective domestic law. Art. 28 EGBGB refers to Italian law in this case. Pursuant to Art. 2184 Codice civile, the statutory interest rate amounts to 10% since 16 December 1990.” (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 172. | 190 (Germany) | Landgericht Kassel 15.02.1996 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | “The demand for interest by the [Seller] is justified in general by CISG Art. 78. If a party fails to pay the price in time, the other party is entitled to interest on it. The due date in accordance with CISG Arts. 58, 59 in this case had occurred before the date given in the application for substantive relief. The rate of interest is to be determined through use of Italian law, which provides an interest rate of 10 % for the prevalent time in Art. 1284 I Codice civile.” (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 173. | 311 (Germany) | Landgericht Hagen 15.10.1997 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | “2.3 [Interest] According to Article 78 CISG, interest should be paid from the date of accrual, at an interest rate of 10%, as provided in the applicable Italian law (Articles 28(1) and (2) EGBGB, Article 1284(1) C.c.). [Seller] did not request payment of additional damages (Article 74 CISG).” (PIL = ITALIAN LAW = CREDITOR’S LAW) |

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| 174. | 240 (Germany) | Landgericht Hamburg 17.06.1996 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price + damages | <p>“[Seller] submits that under the contract [Buyer] owed interest 60 days after the date of each invoice. [Seller] was forced to rely on a bank loan for which it was obliged to pay interest of at least 16.5%. ... The interest claim follows from Art. 78 CISG. [Seller] has sufficiently proved its interest losses by furnishing of its bank statement.”</p> <p>(INTEREST RATE OF THE BANK LOAN)</p> |
| 175. | 123 (Germany) | Oberlandesgericht Frankfurt am Main 18.06.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“In the case before the court, pursuant to Article 28(2) EGBGB, Italian law is applicable to the claim for the purchase price and it also governs the accompanying interest claim. According to the isolated deviating opinion by Stoll, the legal rate [of interest] has to be determined by the domestic sales law of the debtor. ... In this case, however, the court has to decide according to the prevailing legal opinion. Since the amount of interest intentionally is not prescribed in the Convention, the answer can only be taken from the rules of international private law. ... The practical disadvantage of eventually being obliged to investigate foreign law to calculate the interest has to be accepted because of the partial incompleteness of the Convention arising from unsettled disputes during the negotiation process. Besides, disadvantage can be diminished by the availability of adequate charts. Pursuant to Article 1284 Codice Civile as of December 16, 1991 the interest rate amounts to 10%.”</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |
| 176. | 169 (Germany) | Landgericht Aachen 20.06.1995 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“Preferable is the opinion that the interest rate is to be taken from the applicable national law supplementing the CISG, which in turn is to be determined in accordance with the conflict of laws rules of the forum State. According to German private international law, the interest rate is determined - even though this is not undisputed - according to the law governing of the contract; thus, according to the law which would be applicable to the sales contract if the contract were not subject to the Convention. ... Thus, Italian law applies to the interest rate. In Italian law - insofar equivalent to the German regulation - there is a distinction between the legal interest rate and an interest rate based on damages caused by delay. Since</p> |

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| | | | | | <p>under Art. 1284 I Codice Civil (Italian Civil Code) the legal interest rate is already 10%, there is no objection to the requested interest rate in the present case.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 177. | 858 (Germany) | <p>Oberlandesgericht Karlsruhe</p> <p>20.06.2004</p> | <p>SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Germany (Respondent)</p> | Purchase Price not paid | <p>“Since the extent of the claim for interest is left open in Art. 78 CISG, according to German conflicts of law principles French law is to be consulted, which also controls the required interest rate that accompanies the purchase price claim. It can remain unanswered whether [Seller]'s terms and conditions (K 3, I 106R), which provide for the application of French law, were effectively agreed upon between the parties pursuant to the provisions of the CISG. French law applies either according to Art. 27(1) EGBGB because of inclusion of [Seller]'s terms and conditions, or according to Art. 28(1) in conjunction with Art. 28(2) EGBGB. ... According to the highly predominant opinion, the legal interest rate fixed for money claims at the seat of the seller is to form the basis for a claim for interest under Art. 78 CISG. ... In fact, in the request of 16 December 1998 (I 1-7), [Seller] alluded to the fact that the case concerns an international commercial sale and that the claim for interest is primarily subject to French civil law.</p> <p>(PIL = FRENCH LAW = CREDITOR’S LAW)</p> |
| 178. | 370 (Germany) | <p>Oberster Gerichtshof</p> <p>24.10.1995</p> | <p>SELLER'S COUNTRY: San Marino (Claimant) BUYER'S COUNTRY: Germany (Respondent)</p> | Purchase Price not paid | <p>“Seller's interest claim against [Buyer] is not founded in terms of an interest rate of 18% but [Buyer] owes -- pursuant to Art. 78 CISG in conjunction with § 352(1) HGB -- only 5% interest since maturity of the purchase price claim, i.e., since 20 March 1992 because no agreement in deviation between [Seller] and [Buyer] is apparent. The CISG does not govern the amount of the interest rate, so it must be determined according to German law, applicable to this contract of sale by virtue of Art. 28(5) in conjunction with Art. 28(1)(1) EGBGB. Since both [Seller] and [Buyer] are commercial companies under Italian, respectively, German law, the interest rate will be 5% pursuant to § 352(1) HGB. The deviating opinion expressed by the District Court (Landgericht) Stuttgart (RIW 1989, 984 et seq.), according to which the interest rate applicable at the creditor's seat -- here: [Seller]'s seat -- should be relevant must be rejected because in</p> |

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| | | | | | <p>the present case applicability of the CISG only follows from the reference to German law pursuant to Art. 1(1)(b) CISG in conjunction with Art. 28(5), (1)(1) EGBGB. The Italian interest rate of 18% as claimed by [Seller] for interest on payments in arrears does not apply here.”</p> <p>(PIL = GERMAN LAW = DEBTOR’S LAW)</p> |
| 179. | 57 (Germany) | Oberlandesgericht Hamm 22.09.1992 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“The [Seller]'s interest claim is justified based upon Art. 78 CISG, in accordance with Art. 1284 Cc and Art. 28(1) EGBGB.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 180. | 20 (Germany) | Amtsgericht Oldenburg in Holstein 24.04.1990 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“By way of Art. 78 of the CISG, the legal interest rate of Art. 1284(1) of the Italian Civil Code (Codice civile) of five percent per annum is, prima facie, substantiated). The interest demanded by the [Seller] in excess of this rate is also substantiated. This emerges from Art. 78 of the CISG. According to this provision, the seller may claim excess interest by way of damages, the interest damage arising from the seller's not being able to profitably invest the purchase price, or from his needing to take up a loan as a consequence of the failed payment.”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 181. | 130 (Germany) | Kammergericht Berlin 24.6.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price not paid | <p>“To the extent stated in the decision's tenor, the [seller]'s assignee may claim interest on the purchase price as compensation under Arts. 78 and 74 CISG, from the time payment was due according to Art. 58 CISG. A payment reminder notice was not necessary for this claim to arise. According to the parties' agreement, the purchase price was due sixty days after the date on which the invoice was issued. The interest rate is determined by the national Italian law and its prerequisites. It follows from the bank certificate that [seller]'s assignee had to pay interest on the amount stated in the decision”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 182. | 719 (Germany) | Landgericht Flensburg | SELLER'S COUNTRY: Germany (Claimant) | Purchase Price not paid | <p>“[Seller] is entitled to interest on the purchase price under Art. 78 CISG in connection with § 352 HGB. Under Art. 78 CISG,</p> |

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| | | 24.03.1999 | BUYER'S COUNTRY: France (Respondent) | | [Seller] has a right to interest on the purchase price in arrears without sending a request for payment. After [Buyer] had received the goods, it was bound to pay the purchase price at the time stipulated in the invoices (Art. 58 CISG). As the CISG does not settle the rate of interest, national law, that is § 352 HGB, applies. [Seller]'s claim for interest is thus legitimate with respect to 5%, whereas [Seller] did not prove that it suffered a higher damage. (PIL = GERMAN LAW = CREDITOR'S LAW) |
| 183. | 1307 (Germany) | Landgericht Regensburg 24.09.1998 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | “The Court will only allow interest in the amount of 5% under § 352(1) HGB from the time the action was brought, because the [seller] has neither shown that it suffered a higher damage nor proven an earlier culpable delay by the [buyer].” (NO EXPLICIT RULE APPLIED) |
| 184. | 451 (Germany) | Landgericht Düsseldorf 25.08.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | “The [Seller]'s claim for interest - as far as admitted by the court - is founded pursuant to Art. 78 CISG and Art. 1284(1) Cc. Art. 78 CISG is silent as to the amount of interest. Thus, the amount has to be determined in accordance with Italian law (compare Art. 28(2) EGBGB). Pursuant to Art. 1284(1) Cc (old version) the interest rate is 5%. According to the new version of Art. 1284(1) Cc, which has been in force since 16 December 1990, the interest rate is 10%. This new version is also applicable to liabilities concerning which interest has to be paid since before 16 December 1990. [Seller] did not provide proof for the additional interest penalty claimed.” (PIL = ITALIAN LAW = CREDITOR'S LAW) |
| 185. | 1311 (Germany) | Landgericht Berlin 25.05.1999 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | “According to Art. 78 CISG in connection with Arts. 1284 and 1282 Cc, [seller] is also entitled to interest of 5% per year since due date. Art. 78 CISG sets forth that a party is entitled to interest on the claim for the purchase price from the moment the claim is due. Pursuant to Art. 7(2) alt. 2 CISG, the amount of interest payable according to the CISG is based upon the law applicable by virtue of the rules of private international law. Here, the applicable law derives from Art. 3(1) in connection with Art. 28(1) sent. 1 and (2) EGBGB. ... Given that [seller] is situated in Italy, Italian law is applicable. According to Art. |

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| | | | | | 1284(1) Cc, the legal interest rate amounts to 5% and Art. 1282(1) Cc sets forth that claims for money are interest-bearing from the moment they fell due.” (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 186. | 718 (Germany) | Landgericht Saarbrücken 25.11.2002 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: England (Respondent) | Purchase Price | “The contract has the closest links to Germany because Seller, which has its place of business in Germany, carried out the characteristic service. Since the German EGBGB is silent on the question of the rate of interest, Arts. 352 and 353 HGB shall be applied which provide for a statutory rate of interest at 5 %. The Seller can enforce its further claims for interest exceeding the statutory rate of interest as part of the damages (Arts. 74, 78 CISG). It is sufficient that the Seller drew on credit of a certain amount during the period of time in question, it is irrelevant that drawing on such credit took place as a direct consequence of the Buyer's delay in paying the purchase price. Conditions set by Arts. 74 and 78 CISG are undisputedly fulfilled because [Seller] drew on a bank credit for which it paid interest at 12%, therefore the claim is founded” (INTEREST AS DAMAGES) |
| 187. | 21 (Germany) | | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | “The [seller] is the holder of a claim for interest payment of 13% since 15 September 1988 pursuant to Art. 78 CISG in connection with Art. 1284 Par. 1 C.c. and Art. 74 CISG. According to Art. 32 Par. 1 No. 3 EGBGB, Italian law on contracts is applicable to determine any liability to pay interest on a debt. Hence, such a liability results from the non-performance of the contractually agreed obligation to pay the purchase price. Under Italian law, as already mentioned above, one is to apply primarily the CISG, so that autonomous Italian civil law would only apply alternatively as assistance. a) [Foundation for claim of 5% interest] Up to 5%, the claim for interest payment is based on Art. 78 CISG. Art. 1284 Par. C.c. is then decisive to determine the actual level of the interest rate.“ (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 188. | 209 (Germany) | Oberlandesgericht Rostock | SELLER'S COUNTRY: Denmark (Claimant) | Purchase Price | “Due to the absence of a different regulation in the CISG, the interest rate is regulated by the national law to which the rules |

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| | | 27.07.1995 | BUYER'S COUNTRY: Germany (Respondent) | | of the private international law refer. According to Art. 32(1) (No. 3) EGBGB, Danish law has to be applied. Under this law, the interest rate while in default amounts to 6% p.a. above the respective discount rate of the Danish National Bank (§§ 3, 5 Renteloven [Law on Interest]). The [seller] has not stated how high the discount rate of the Danish National Bank has been since 1 December 1992. The [seller] also did not prove that the claimed default damage of 12% occurred. The Court estimates that the discount rate of the Danish National Bank was at least 1%, so that a unified interest rate of 7% exists since 1 December 1992.” (PIL = DANISH LAW = CREDITOR’S LAW) |
| 189. | 1534 (Germany) | Landgericht Kiel 27.07.2004 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | “[Seller]’s claims for payment of interest follow from Art. 78 CISG in conjunction with §§ 286(1), (3), 288(1), (2) BGB, because the interest rate is governed by the internal laws of Germany. 1. According to Art. 78 CISG, the seller may claim payment of interest from the buyer if the latter fails to pay the purchase price. Due to the fact that the CISG does not govern the interest rate, the applicable interest rate is under dispute. The Court follows the leading doctrine in jurisprudence and literature, which gears to the law applicable at the debtor’s seat. This connection is appropriate because it responds to the situation in which a buyer, by way of withholding the purchase price, may invest the money to a possibly greater financial advantage than the advantage gained through the performance of the contract. The buyer is unjustifiably enriched by using the assets, and this very enrichment has occurred at its seat 2. According to § 288 (2) BGB, the default interest rate is 8% above the prime lending rate because the parties are businesses and the present dispute concerns a monetary claim.” (DEBTOR’S PLACE OF BUSINESS) |
| 190. | 1619 (Germany) | Landgericht Düsseldorf 28.08.2003 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | “Consequently, [Buyer] is obliged to pay [Seller] the interest awarded. The amount of interest is based on § 288(2) BGB and well-founded.” |

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| | | | | | (ACCORDING TO CLAIM) |
| 191. | 189 (Germany) | Landgericht Oldenburg 28.02.1996 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Netherlands (Respondent) | Purchase Price | <p>“As concerns interest, [Seller]'s claim relies on Art. 78 CISG. The interest rate is determined by national law: Focusing on the contract's specific performance -- i.e., [Seller]'s duty to deliver eggs -- § 28 of the German Civil Code provisions on Private International law refers to German law. According to § 352 and § 353 of the German Commercial Code an interest rate of 5 % applies.”</p> <p>(PIL = GERMAN LAW = CREDITOR'S LAW)</p> |
| 192. | 172 (Germany) | Amtsgericht Augsburg 29.01.1996 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | <p>“Art. 78 CISG gives no hint as to the rate of interest. According to the prevailing opinion, the rate of interest is determined by the otherwise applicable national law. The parties did not specify the applicable law in their contract (Art. 27(1) EGBGB), therefore the law of the place of the seller is applicable, according to Art. 28(2) EGBGB. In Switzerland, the legal rate of interest is five per cent and not as [Seller] asserted ten per cent. To the extent [Seller] asserted interest of more than five per cent, [Seller] has not provided proof for a higher rate of interest.”</p> <p>(PIL = SWISS LAW = CREDITOR'S LAW)</p> |
| 193. | 235 (Germany) | Landgericht München I 29.05.1995 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“2. [Seller]'s claim for interest is justified due to [Buyer]'s default (§ 284 Abs. 1 sentence 1, § 286 Abs. 1 BGB and Art. 74 CISG respectively). [Seller] stated to have reminded [Buyer] on 30 September 1994. Art. 78 CISG does not exclude the claim for default interest. Rather, a higher damage due to the availment of bank credits can be claimed as compensation.”</p> <p>(INTEREST AS DAMAGES)</p> |
| 194. | 11 (Germany) | Landgericht Stuttgart 31.08.1889 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | <p>“Plaintiff (seller) can recover loss of use of capital as damages. This is supported by Article 74 based on the assumption that, in the event of default, the debtor is obligated to pay interest. The CISG does not fix the rate of interest. This is a controversial subject. It is advisable to fall back on the national law of the creditor because the consequences of the debtor's nonfulfillment of his payment obligation take effect there and payment was due in Italian currency. Therefore, the debtor must carry the risk of paying the monetary debt in the foreign</p> |

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| | | | | | currency according to the rate of interest there.” (LAW OF CREDITOR’S PLACE OF BUSINESS) |
| 195. | 256 (Germany) | Oberlandesgericht Koblenz 31.01.1997 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | “The seller was entitled to interest (article 78 CISG), determined according to Dutch law.” (PIL = DUTCH LAW = CREDITOR’S LAW) |
| 196. | 2476 (Germany) | Landgericht Köln 29.05.2012 | SELLER'S COUNTRY: Italy (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Damages claim of Buyer | “Wegen der Zinshöhe kann auf § 291 BGB, der wegen der Rechtswahl heranzuziehen ist, zurückgegriffen werden.” (CHOICE OF LAW) |
| 197. | 1218 (Germany) | Oberlandesgericht Köln 03.03.2008 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | “Hinsichtlich der Zinshöhe ist auf das niederländische Recht als Recht der charakteristischen Leistung abzustellen, da das CISG keine Regelung enthält (Schlechtriem, a.a.O., Art. 78, Rdnr. 27 ff). Nach Art. 120 "Neues Bürgerl. Gesetzbuch" der Niederlande, Buch 6, liegen die gesetzlichen Zinsen 7 Prozentpunkte über dem Basiszinssatz zum 26.04.2004.” (PIL = Dutch Law = Creditor’s Law) |
| 198. | 1630 (Germany) | Landgericht Dresden 28.04.2006 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | “Die in Rede stehende Rechnung war am 30.05.2003 fällig. Bei der Zinshöhe ist mangels des Vorhandenseins einer Rechtswahl gemäß Art. 78 CISG i.V.m. Art. 28 Abs. 1 EGBGB auf das Recht des Staates abzustellen, mit dem der Vertrag die engsten Verbindungen aufweist. [...]. Wird der Vertrag –wie hier- in Ausübung einer gewerblichen Tätigkeit des Schuldners der charakteristischen Leistung geschlossen, so ist im Zweifel kraft engster Verbindung das Recht am Ort der Niederlassung des Schuldners der charakteristischen Leistung maßgeblich.” (PIL = French law = Creditor’s Law) |
| 199. | 1936 (Hungary) | Congrád County Court 06.06.2007 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Hungary (Respondent) | Purchase Price | “As the Convention does not contain any provisions regarding the interest rate, by virtue of Art. 7(2) of the Convention, cited above, the interest rate shall be determined in accordance with Art. 25 (a) of Law Decree No. 13 of 1979 on Private International Law, modified several times, pursuant to which the law applicable to sales contracts shall be the law of the |

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| | | | | | <p>country where seller's domicile, usual abode, or principal or other place of business is located at the time of conclusion of the contract. In this case, it is the law of Germany, therefore, the interest rate shall be determined under German law.</p> <p>Pursuant to Art. 5(1) of the above Law Decree on Private International Law, the Court inquired about the foreign law ex officio, and as a result of that the Court found that in the present dispute, Art. 288(2) of the German Civil Code (BGB), in force as of 1 January 2003, applies, according to which the interest rate shall be the central bank prime rate plus 8 %.”</p> <p>(PIL = GERMAN LAW = CREDITOR’S LAW)</p> |
| 200. | 1937 (Hungary) | Judicial Board of Szeged 22.11.2007 | <p>SELLER'S COUNTRY: Germany (Claimant)</p> <p>BUYER'S COUNTRY: Hungary (Respondent)</p> | Purchase price | <p>“As the Court of First Instance made a correct ruling concerning the applicable law, the default interest rate also had to be determined by German law. General and specific contract provision of Act No. 4 of 1959 on the Civil Code of Hungary are applicable solely to legal relationships covered by the Act, therefore, if German private law is applied, default interest provisions of the Civil Code of Hungary cannot be applied. Pursuant to Art. 288 (2) BGB, in case of late payment regarding commercial transactions, the interest rate shall be the central bank prime rate plus 8 percent.”</p> <p>(PIL = GERMANY = CREDITOR’S LAW)</p> |
| 201. | 678 (Italy) | Tribunale di Pavia 29.12.1999 | <p>SELLER'S COUNTRY: Italy (Claimant)</p> <p>BUYER'S COUNTRY: Greece (Respondent)</p> | Purchase price | <p>“As far as interest on the sums not paid, it will be observed that the United Nations Convention provides only a general right to interest, without specifying which rate is to be applied. In light of the fact that the drafters of the Convention have intentionally left the problem of the applicable rate unresolved, as one evinces from the travaux préparatoires, it cannot be maintained that this is an issue dealing with one of the areas which, by virtue of Article 7(2) of the Convention, should be governed by the general principles upon which the Convention is based. Instead, it is a question not at all addressed by the Convention and which hence is to be resolved in light of the applicable law, that is to say, in light of [internal] Italian law -- such being the law of the seller, which Art. 3(1) of the Hague Convention of 1955 beckons to. ... Consequently, interest is determined according to the measure of the legal rate in force in Italy.</p> |

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| 202. | 823 (Italy) | Tribunale di Pavia 31.03.2004 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | <p>“In order determine the interest rate, one must then make reference to the law applicable by virtue of the norms of the private international law of the forum. In this case it is necessary therefore to make reference to the already mentioned norms of the Hague Convention of 1955, that refer back to Italian law as the law of the seller (see Article 3(1) of the Hague Convention of 1955). [...] As for the monetary revaluation requested by the [seller], it must be pointed out that Article 78, referring back to Article 74 of the [United Nations] Convention, allows that the award of interest be cumulated with the award of other damages not paid through the determination of the interest by the above-indicated measure. As for such further damages a precise statement is therefore necessary (for example, affirming that the devaluation was greater than the legal interest rate and that, if the sum of money had been timely received, it would have been invested so as to reduce the impact of the depreciation, or in any case so as to obtain remuneration in excess of the legal rate) and timely proof that, by virtue of the general principle of onus probandi incumbit ei qui dicit,[5] upon which the [United Nations] Convention is based (see Trib. Rimini, cited above; Trib. Vigevano, cited above) -- in addition to the Italian procedural system -- this was incumbent upon the complaining party, which, however, it completely neglected to do. Therefore, the claim must be rejected.”</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |
| 203. | 2336 (Italy) | Tribunale di Forli 26.03.2009 | SELLER'S COUNTRY: Italy (Respondent) BUYER'S COUNTRY: Australia (Claimant) | Purchase Price | <p>“The issue of the interest rate has, therefore, to be solved through the applicable law, to be determined by virtue of the private international law provisions. ... By virtue of the choice of the parties in favor of Italian law, binding pursuant to article 2 of the 1955 Hague Convention, the interest rate is the Italian one; therefore, the interest has to be calculated in the measure of the legal rate in force in Italy as per article 5, paragraph I of the legislative decree n. 231/2000.”</p> <p>(Choice of Law = Italian Law = Creditor's Law)</p> |

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| 204. | 1434 (Netherlands) | Gerechtshof 's Hertogenbosch 02.01.2007 | SELLER'S COUNTRY: Netherlands (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase price | <p>“The appellant also claimed payment of legal interest on the non-paid part of the main sum. Under article 78 CISG these can be compensated, but that article does not fix an interest rate. This latter must be determined by reference to the law which is applicable under article 7(2) CISG, i.e. Dutch law. The Court of Appeals thus overturned the Court of First Instance's judgment and ordered the Respondent to pay the rest of the original sum plus additional costs and interest.”</p> <p>(PIL = DUTCH LAW = CREDITOR'S LAW)</p> |
| 205. | 1899 (Netherlands) | Rechtbank Rotterdam 15.10.2008 | SELLER'S COUNTRY: Netherlands (Respondent) BUYER'S COUNTRY: Belgium (Claimant) | Purchase price | <p>“The District Court further found that Eyroflam was entitled to interest on the purchase price - which had not yet been paid - in accordance with Article 78 CISG. The amount of interest had to be determined in accordance with the provisions of the Dutch Civil Code, as the CISG lacks any provision thereon. It follows from Article 74 that Eyroflam also had a right to have extrajudicial collection costs compensated. This concerned the costs that had been reasonably incurred.”</p> <p>(PIL = DUTCH LAW = CREDITOR'S LAW)</p> |
| 206. | 1789 (Netherlands) | Rechtbank Breda 16.01.2009 | SELLER'S COUNTRY: Greece (Claimant) BUYER'S COUNTRY: Netherlands (Respondent) | Purchase price | <p>“Seller claims for legal interest on the invoiced amounts in arrears. On the basis of article 78 CISG, [Seller] is entitled to interest on the invoiced amounts in arrears. Since the CISG does not specify the interest rate and it has neither been stated nor proven that a rate has been agreed between the parties, the interest rate must be settled in conformity with the law applicable by virtue of the rules of private international law, pursuant to article 7(2) CISG. Given the absence of a choice of applicable law by the parties, this is in the present case Greek law, as Greece is the country with which the contract of sale is most closely connected”</p> <p>(PIL = GREEK LAW = CREDITOR'S LAW)</p> |
| 207. | 1758 (Slovakia) | Regional Court Bratislava 01.02.2007 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase price | <p>“The court therefore concluded that subsequent to the delivery of the goods, the [Seller] is entitled to payment of the purchase price invoiced by the abovementioned invoices and to payment of interest of 19 % annually, as this interest rate was deemed by the court to be standard with regards to interest rates of bank credits provided by banks in place of business of the debtor at</p> |

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| | | | | | the time of concluding of the contract. Right to interest was granted from the due invoiced sums from the first day of default - the day after the maturity date of the invoices until payment, as it was asserted in the action.” (PLACE OF BUSINESS OF THE DEBTOR) |
| 208. | 1860 (Slovakia) | Schiedsgericht der Börse für landwirtschaftliche Produkte in Wien 06.03.2006 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | “With respect to the interest, the court granted it under sec. 735 of the Czech Commercial Code, as this amount corresponded to the interest rate usual in the seat of the [Buyer] at the time of the default (sec. 121 of Slovak Civil Procedure Code - hereinafter referred to as "CPC"). The court granted the right to interest for the period from 4 July 2000, since the [Buyer] was in default with payment of the price from this day, as it was obliged to pay the invoice with due date on 3 July 2000. The court applied sec. 735 of the Czech Commercial Code with respect to the interest, since the Convention does not contain any precise regulation of interest rate. The court applied the Czech substantive law, as it was applicable under sec. 10 part 2 a) of act no. 97/1963 Coll. on international private and procedural law as in force at the time of concluding of the contract (2000). The court therefore upheld the action and decided as prescribed in the judgment” (PIL = CZECH LAW = CREDITOR’S LAW) |
| 209. | 1759 (Slovakia) | District Court Bardejov 09.03.2007 | SELLER'S COUNTRY: Poland (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | “The [Buyer] is obliged to pay to the [Seller] the sum of 5,000.- PLN and interest of 14.5% annually” (NO EXPLICIT RULE APPLIED) |
| 210. | 1797 (Slovakia) | Regional Court Banska Bystrica 10.05.2006 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | “The [Buyer] is obliged to pay to the [Seller] a sum in amount of 5,632.- EUR and interest of 14 % annually.” (NO EXPLICIT RULE APPLIED) |
| 211. | 1754 (Slovakia) | Regional Court Bratislava 15.12.2005 | SELLER'S COUNTRY: Belgium (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | “ The court therefore bound the [Buyer] to pay the residual part of the purchase price, as it was asserted by the [Seller] in its action with interest of 0.05% daily (18.25% annually), which interest rate is not exceeding usual interest rates provided by local banks at the time of concluding of the contract. Right to |

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| | | | | | interest was granted from the first day of default until payment, as it was claimed in the action.” (NO EXPLICIT RULE APPLIED) |
| 212. | 1863 (Slovakia) | District Court Galanta 15.12.2006 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase price | “Under article 78 of the Convention, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74. The interest rate is not expressly prescribed in the Convention. Under article 7(2) of the Convention, questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law, i.e., by the French law. Under the French law, unless the parties to the contract choose otherwise, a creditor has a right to interest corresponding to the interest rate prescribed by the European Central Bank valid before the first day of the half-year when the default lasts raised by 7%.” (PIL = FRENCH LAW = CREDITOR'S LAW) |
| 213. | 1874 (Slovakia) | District Court Dolny Kubin 17.06.2008 | SELLER'S COUNTRY: Poland (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase price | “The interest rate is not prescribed in the Vienna Convention. The court therefore applied relevant provisions of the Polish law. Under art. 481 of the Polish Civil Code, the maximum interest rate is prescribed by a special regulation. Under regulation of the Council of Ministers no. 1662/2005, the interest rate in force from 15 October 2005 is 11.5 % annually and is in force until present days.” (PIL = POLISH LAW = CREDITOR'S LAW) |
| 214. | 1756 (Slovakia) | District Court Nitra 17.05.2006 | SELLER'S COUNTRY: Greece (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase price | “The contract of sale was concluded under the Slovak Commercial Code and the [Seller] claimed also its right to payment of interest with reference to this Code... Under article 78 of the Convention, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74. Since the [Buyer] is in default with payment of the purchase price, the [Seller] is entitled to interest on this |

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| | | | | | <p>sum. The Convention does not prescribe interest rate and since the [Seller] argued that the contract of sale was concluded under Slovak law, the court granted the right to interest with reference to sec. 369 part 2 and sec. 502 part 1 of the Slovak Commercial Code as amended.</p> <p>Under sec. 369 part 1 of the Slovak Commercial Code, if a debtor is in default in fulfilment of a monetary obligation or its part, and no rate for paying interest on the sum in arrears has been agreed upon, the debtor is obliged to pay interest on the sum in arrears as stipulated in the contract, otherwise at an interest rate ten percent higher than the official interest rate published by the Slovak National Bank applicable at the day before the first day of the half-year, when the default started. This interest rate is applicable for the whole period of that half-year.”</p> <p>(CHOICE OF LAW)</p> |
| 215. | 1765 (Slovakia) | District Court Bratislava 22.05.2008 | <p>SELLER'S COUNTRY: Austria (Claimant)</p> <p>BUYER'S COUNTRY: Slovak Republic (Respondent)</p> | Purchase Price | <p>“Under article 78 of the Convention, the [Seller] has right to payment of interest. Interest rate is with reference to article 78 and in connection with sec. 10 part 2 a) act no. 97/1963 Coll. prescribed by Austrian law amounting to 8% per annum. ...</p> <p>Under sec. 517 part 2 of the Slovak Civil Code, if a debtor is in default with payment of a pecuniary debt, a creditor has right to payment of interest on this sum, unless the debtor is obliged to pay interest charge with reference to special statute; interest rate and interest charge is prescribed by special act.</p> <p>Interest rate amounts to double discount rate published by the Slovak National Bank valid at the first day of the default (sec. 3, 4 of ordinance of the Slovak government no. 87/1995 Coll.). The court therefore bound the [Buyer] to pay to the [Seller] the purchase price for the delivered goods in amount of 8,309.39 EUR with interest of 8% annually from 30 November 2006 until payment. Right to interest was granted to the [Seller] amounting to double the discount rate published by the Slovak National Bank: 4% x 2 = 8% p.a. from the day following the maturity date of the invoice.”</p> <p>(NO EXPLICIT RULE APPLIED)</p> |

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| 216. | 1879 (Slovakia) | District Court Dolny Kubin 24.11.2008 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | <p>“The court qualified the claim to payment of the sum of 9,176.- Kc under art. 53 of the UN Convention on Contracts for the International Sale of goods and the contractual penalty under sec. 544 et seq. of the Slovak Civil Code applied in connection to sec. 1 part 2 of the Slovak Commercial Code and with respect to the interest (claimed in a lower amount than the statutory rate) under sec. 735 of the Commercial Code.”</p> <p>(SLOVAK LAW APPLIED = NO EXPLANATION = DEBTOR’S LAW)</p> |
| 217. | 1755 (Slovakia) | District Court Nitra 27.02.2006 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | <p>“Since the [Buyer] is in default with payment of the purchase price, the [Seller] is entitled to interest on this sum, as it asserted this right with reference to the Italian statutory decree no. 231/2002. The court upheld the [Seller]’s right to interest, since it was asserted with reference to the law of the country in which the [Seller] has its place of business.”</p> <p>(ITALIAN LAW APPLIED = NO EXPLANATION = CREDITOR’S LAW)</p> |
| 218. | 1872 (Slovakia) | District Court Banska Bystrica 29.04.2008 | SELLER'S COUNTRY: Slovak Republic (Claimant) BUYER'S COUNTRY: Hungary (Respondent) | Purchase Price | <p>“The parties also agreed in the Agreement that Slovak law would apply to their relationship and on the jurisdiction of the court in the [Seller]’s place of registered office. Since the [Buyer] is in default with payment of the purchase price, the [Seller] claimed also its right to payment of interest... Under section 369 part 1 of the Slovak Commercial Code, if a debtor is in default in fulfilment of a monetary obligation or its part, he is obliged to pay interest on the sum in arrears agreed in the contract, otherwise 10 % higher than the basic interest rate of the National Bank of Slovakia in force before the first day of the calendar half-year in which the default commenced.”</p> <p>(CHOICE OF LAW)</p> |
| 219. | 1857 (Slovakia) | Regional Court Zilina 29.03.2004 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase price | <p>“Since article 78 does not prescribe interest rate, it has to be determined under the law of the State where the seller has its registered office and the [Seller] was therefore obliged to prove that its claim to payment of interest of 3% annually was in accordance with the applicable law. The [Seller] did not justify its claim with respect to the interest rate and did not submit any evidence thereto.”</p> |

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| | | | | | (PIL = AUSTRIAN LAW = CREDITOR'S LAW) |
| 220. | 1766 (Slovakia) | District Court Nitra 29.05.2008 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | <p>“The abovementioned Vienna Convention regulates the right to interest only with respect to its existence and does not specify its amount. The court therefore qualified this legal issue under act no. 97/1963 Coll. on international private and procedural law, as amended. ... Under sec. 10 part 2 a) of this act, unless a special legal instrument stipulates otherwise, contracts of sale will be usually governed by the law of the country of seller's registered office (domicile) at the time of concluding of a contract. Under sec. 369 part 1 of the Commercial Code of the Czech Republic if a debtor is in default in fulfilment of a monetary obligation or its part, and no rate for paying interest on the sum has been agreed upon, the debtor is obliged to pay interest on the sum specified in the contract or if no such provision is in the contract, in interest rate prescribed by rules of civil law. Under sec. 1 of the ordinance of the Czech Republic government no. 163/2005 Coll. which amends ordinance no. 142/1994 Coll. prescribing interest rates and interest charges in default under Czech Civil Code, the interest rate shall be the repo rate announced by the Czech National Bank increased by 7 %.”</p> |
| 221. | 1871 (Slovakia) | Regional Court Zilina 10.03.2008 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Purchase Price | <p>“... since the UN Convention does not prescribe the interest rate and the Court therefore applied the law of the Czech Republic, i.e., sec. 735 and sec. 369 of the Czech Commercial Code in force at the time of creation of the contractual relationship in April and May 2001, as no choice of law was proved to be made in this case (the Court applied sec. 10 part 2 a) of act no. 97/1963 Coll.). With reference to these provisions, the court determined the interest rate according to the law of the country of the [Seller], i.e., according to sec. 369 and 735 of the Czech Commercial Code.”</p> |
| 222. | 2230 (Slovakia) | District Court Nitra 29.10.2008 | SELLER'S COUNTRY: Slovakia (Claimant) BUYER'S COUNTRY: | Purchase Price | <p>“Under article 78 of the Convention, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for</p> |

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| | | | Slovenia (Respondent) | | <p>damages recoverable under article 74. Under sec. 369 part 1 of the Slovak Commercial Code if a debtor is in default in fulfilment of a monetary obligation or its part, and no rate for paying interest on the sum has been agreed upon, the debtor is obliged to pay interest corresponding to the general interest rate prescribed by the National Bank of Slovak Republic in effect on the first day of the half-year in which the default emerged, raised by 10%. Such interest rate shall apply for the entire half-year.”</p> <p>(PIL = SLOVAK LAW = LAW OF CREDITOR)</p> |
| 223. | 1861 (Slovakia) | Regional Court Nitra 27.06.2006 | <p>SELLER'S COUNTRY: Czech Republic (Claimant)</p> <p>BUYER'S COUNTRY: Slovak Republic (Respondent)</p> | Purchase price | <p>“The parties to the contract did not choose the applicable law. The court therefore decided on the rate of interest under the law applicable at the place of business of the [Seller], i.e., under the law of the Czech Republic. Under sec. 517 part 2 of the Czech Civil Code, in case of default in payment of a monetary debt, a creditor has the right to claim interest, unless the debtor is obliged to pay a charge on default, with the interest rate determined by a special regulation.”</p> <p>(PIL = Czech law = Creditor’s Law)</p> |
| 224. | 1867 (Slovakia) | District Court Bardejov 29.10.2007 | <p>SELLER'S COUNTRY: Czech Republic (Claimant)</p> <p>BUYER'S COUNTRY: Slovak Republic (Respondent)</p> | Purchase Price | <p>“The [Seller] justified the interest rate it claimed by referring to sec. 369 of the Slovak Commercial Code.[...] The [Buyer] failed to duly fulfil this obligation on time and was in default with payment of this sum from the first day after the date of maturity prescribed in the invoice. The [Buyer] is therefore obliged to pay interest on this sum, as is specified in this judgment, since this interest rate does not exceed the statutory interest rate prescribed in sec. 369 of the Slovak Commercial Code.”</p> <p>(PIL = Slovak law = Debtor’s Law)</p> |
| 225. | 1762 (Slovakia) | District Court Dolny Kubin 21.01.2008 | <p>SELLER'S COUNTRY: Czech Republic (Claimant)</p> <p>BUYER'S COUNTRY: Slovak Republic (Respondent)</p> | Outstanding price for delivered goods | <p>“The court referred to article 78 of this Convention in connection with sec. 735 of the Slovak Commercial Code (as it was also pointed out by the [Seller], the applicable internal law in this case is the Slovak law, since the contracts of sale were concluded in establishment of the [Buyer] in Slovakia) and granted the [Seller] right to interest.”</p> |

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| 226. | 1868 (Slovakia) | District Court Dolny Kubin 06.12.2007 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Payment of purchase price | <p>“With reference to the abovementioned, the court took into consideration the recognition of debt corresponding to the asserted claim in its entirety (the principal and appurtenances corresponding to interest of 13% annually on the sum of 5,492.85 EUR for the period from 16 May 2006 until payment) and upheld the action in its entirety, with respect to sec. 153a part 1 CPC. The court qualified the claim to payment of the sum of 5,492.85.- EUR under art. 53 of the UN Convention on Contracts for the International Sale of Goods. With respect to the interest, the court granted it in the amount claimed, as it corresponded to the period of default of the [Buyer] with payment of the purchase price.”</p> <p>(ACCORDING TO CLAIM / DEBTOR'S LAW)</p> |
| 227. | 2139 (Slovakia) | District Court Bardejov 05.02.2008 | SELLER'S COUNTRY: Poland (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Outstanding price for delivered goods | <p>“The court found, from the gathered evidence and by application of the Convention, that the claim asserted by the [Seller] in its action is justified and therefore the court upheld the action in its entirety and bound the [Buyer] to pay the sum of 60,246.10 Sk with interest of 16% annually for the period from 31 March 2004 until payment. The [Buyer] had the obligation to pay the purchase price for the goods delivered, as asserted by invoice no. 000159/EX/2004/RZ, until 30 March 2004. The [Buyer] failed to fulfil this obligation and therefore was in default of performance of this obligation from the day after the due date of the invoice, where the interest rate was calculated in accordance with sec. 369 of the Slovak Commercial Code.”</p> <p>(PIL = SLOVAK LAW = DEBTOR'S LAW)</p> |
| 228. | 1763 (Slovakia) 1764 is the decision of the lower court | Supreme Court Slovak Republic 03.04.2008 | SELLER'S COUNTRY: Czech Republic (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Outstanding price for delivered goods | <p>“The Court upheld [Seller]'s right to interest with reference to Art. 78 of the UN Convention, taking into consideration the maturity date of invoices and partial payments. The [Seller] claimed by the action filed with the Court on 14 December 2000 the right to payment of the principal in amount of 5,474.44 EUR and 3% interest. [Seller] derived his right to payment from the delivery of goods made to order of the [Buyer].”</p> |

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| 229. | 1870 (Slovakia) | District Court Banska Bystrica 07.03.2008 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Slovak Republic (Respondent) | Outstanding price for delivered goods | <p>“Since the [Buyer] is in default with payment of the price, the [Seller] claimed also its right to payment of interest with reference to article 78 of the Convention in connection with sec. 10 part 1 of act no. 97/1963 Coll. on International Private and Procedural Law. The court considered the Slovak law to be the most reasonable to apply to the relationship, since the delivery of the goods took place in the premises of the [Buyer], i.e., in the Slovak Republic and the case is tried by the court in the State of the [Buyer], i.e., in the Slovak Republic.”</p> <p>(PIL = SLOVAK LAW = DEBTOR’S LAW)</p> |
| 230. | 1959 (Slovenia) | Higher Court Ljubljana 14.12.2005 | SELLER'S COUNTRY: Slovenia (Respondent) BUYER'S COUNTRY: Germany (Claimant) | Restitution claim + damages | <p>“The Court of First Instance, has also correctly ruled that [Seller] has to repay to the [Buyer] storage costs for [Seller]’s goods and as well the default interest from both claims, repayment of the remainder of the purchase price and of the storage costs (Article 78 of the CISG). ... CFI has correctly established the amount of default interest that belongs to [Buyer] from procedure costs. This is receivable in Tolars for what Article 378 of Slovenian Obligations Act applies. Therefore, different grounds set forth in the appeal are not to be considered.”</p> <p>(SLOVENIAN LAW = DEBTOR’S LAW)</p> |
| 231. | 2083 (Spain) | Audiencia Provincial de Valencia 08.04.2008 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Spain (Respondent) | Purchase price | <p>“Article 78 of the Convention provides that if a party fails to pay the price or any other sum owed, the other party is entitled to receive interest. Certainly, that provision does not set the "dies a quo" of the establishment of the interest, but Article 7(2) of the Convention provides that those matters not expressly settled, are to be settled in conformity with the general principles underlying the Convention or, in their absence in accordance to the law applicable under the rules of private international law; therefore, article 63.1 of the Commercial Code applies. It provides that the effects of late compliance with trade obligations in contracts that provide a due day, commence on the following due date, and that the type of interest will be that provided in Act 3 / 2004 of 29 December 2003.”</p> |

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| 232. | 1241 (Spain) | Audiencia Provincial de Cuenca 31.01.2005 | SELLER'S COUNTRY: Germany (presumably) (Claimant) BUYER'S COUNTRY: Spain (Respondent) | Purchase Price | <p>“The [Seller]'s claim regarding the allocation of interest must suffer the same rejection as the previous grounds for appeal, since we are not before a substantial estimation of the claim, but the amount to be paid by the [Buyer] to the [Seller] has required the timely liquidation during the contested decision. As the Supreme Court's decision of 14 July 2003 (RJ 2003, 4635) states, the principle of in illiquidis non fit mora refers to the situation of the claim of money debts in which, as the claimed amount is unliquidated, its liquidation ought to be done through the proceedings. Therefore, mora solvendi [delinquency of the obligor in complying with his obligations] cannot be appreciated, for the effects of the claim of legal interest. This is what has happened in the case at trial; thus the [Seller]'s appeal deserves to be rejected.”</p> <p>(NOT RELEVANT AS NO INTEREST RATE IS MENTIONED)</p> |
| 233. | 1995 (Switzerland) | Handelsgericht des Kantons Bern 17.08.2009 | SELLER'S COUNTRY: Spain (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase price | <p>“Im hier zu beurteilenden Fall ist der geschuldete Kaufpreis in Euro angegeben und wurde einzig aufgrund der gesetzlichen Bestimmungen im Zahlungsbefehl in Franken umgewandelt. Für eine in Euro zu erbringende Zahlung kommt der Hauptfinanzierungsgrundsatz resp. die Zahlungsverzugsrichtlinie der EU zur. Der geforderte Verzugszins von 5% liegt gemäss Art. 3 Abs. lit. d im Rahmen dieser Richtlinie und stimmt zudem mit dem schweizerischen Ansatz überein. Das Rechtsbegehren 1 ist damit gutzuheissen.“</p> <p>(DOMICILIARY RATE OF CURRENCY)</p> |
| 234. | 246 (Switzerland) | Handelsgericht des Kantons Zürich 21.09.1995 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“Art. 78 UNKR regelt die Höhe der Zinsen nicht. Die Zinshöhe ist daher dem anwendbaren nationalen Recht zu entnehmen. Dieses ist nach Massgabe der Kollisionsregeln des Forumsstaates zu ermitteln. Nach Art. 3 Abs. 1 des Haager Abkommens von 1955 untersteht der Kaufvertrag dem Recht des Staates, in dem der Verkäufer seinen gewöhnlichen Aufenthalt hat (Art. 118 Abs. 1 IPRG). Dieser hat seinen Sitz in Österreich.</p> |

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| | | | | | <p>Nach Par. 352 HGB ist bei Handelsgeschäften ein gesetzlicher Verzugszins von 5% zu bezahlen. Der Anspruch auf gesetzliche Verzugszinsen schliesst allerdings die Geltendmachung eines tatsächlich entstandenen höheren Schadens nach UNKR nicht aus. Das ergibt sich daraus, dass in Art. 78 UNKR ausdrücklich bestimmt wird, dass der Zinsanspruch nach Art. 78 UNKR 'unbeschadet eines Schadenersatzanspruches in Art. 74' gegeben ist. Ein Schaden ist zu ersetzen, wenn der Verkäufer gezwungen ist, einen Bankkredit zu höheren Zinsen aufzunehmen.“</p> <p>(PIL = AUSTRIA = CREDITOR'S LAW)</p> |
| 235. | 1192 (Switzerland) | Handelsgericht des Kantons Zürich 22.12.2005 | SELLER'S COUNTRY: Switzerland (Claimant) BUYERS' COUNTRY: Mexico (Respondent) | Purchase Price | <p>“The amount of interest follows from the contractual agreement. According to the contract, the interest owed shall amount to 2 % above the prime bank lending rate for unsecured loans in the Canton of Bern (Art. XII, no. 3). According to the Judge at the Commercial Court, Mr. Hartmann, this amount can never be determined with the transparency required and thus cannot be relied on (p. 190). As a result, the interest rate which the parties have agreed on cannot be applied. Consequently, the contract is to be supplemented according to the parties' will. The parties did not want to agree on a fixed interest rate, but rather opted for a variable reference interest rate for financial investments in Switzerland. It is therefore reasonable to assume that the parties would have agreed on the LIBOR (London Inter Bank Offered Rate) for Swiss francs, had they known of the inapplicability of the reference rate actually agreed on. According to the Judge at the Commercial Court, Mr. Hartmann, the LIBOR was 4 % for the period of time concerned (p. 190). Thus, in accordance with the amended claim of the [Seller], interest in the amount of 6 % is owed on the total sum of CHF 239,987.95 from 25 January 2001.”</p> <p>(INVALID CONTRACTUAL INTEREST RATE SUPPLEMENTED ACCORDING TO THE PARTIES' WILL = LIBOR + 2%)</p> |
| 236. | 245 (Switzerland) | Handelsgericht des Kantons St. Gallen | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: | Purchase Price | <p>“Art. 78 CISG sets out that each contracting party that fails to pay an amount of money due from the sales contract is to pay interest. The rate of interest is not dealt with in the CISG and is</p> |

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| | | 05.12.1995 | Switzerland (Respondent) | | <p>to be determined in accordance with the rules of private international law applicable under the lex fori. In the present case, the contract provides for the application of German law. According to para. 288 BGB, the monetary accumulates interest at a rate of 4% per year during the period of default; if the creditor can demand higher interest for another legal reason, such interest is to be paid. The creditor can assert a higher rate of interest to the extent that the requirements of para. 268 BGB are satisfied, i.e., provided that the debtor is in default. The interest damage can exist either in the loss of interest made by investing the amount or in the incurrence of credit interest. The interest loss must generally be stated as a definite amount, although the creditor does not have a very high burden of proof in this regard. The [Seller] has presented a confirmation from the Commerzbank Hamburg, in which the credit interest paid by the [Seller] for the timeframes cited is listed (claim. ex. 18). Thereby, the [Seller] has sufficiently proved the damage suffered by it. Therefore, the default interest is to be protected in the amount claimed”</p> <p>(CREDIT INTEREST RATE AS DAMAGES)</p> |
| 237. | 1781 (Switzerland) | Kantonsgericht Appenzell Ausserrhoden 06.09.2007 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“[Seller] claims default interest of 5% since 31 May 2003 (court file, pp. 2/12 and 14 et seq.). In the absence of any agreement to the contrary, the purchase price becomes mature at the time when the goods are handed over (Art. 58(1) CISG). The obligation to pay default interest exists as of the time of maturity (Art. 78 CISG); a reminding notice need not be submitted (Art. 59 CISG). The interest rate is not determined by the CISG itself. It is governed by the domestic law applicable to the contract, which is Italian law in the present case. Within the jurisdiction of the European Community (Italy being a Member State), Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on Combating Late Payment in Commercial Transactions requires that the default interest rate be set at least at 7% above the prime lending rate. Thus, an interest rate of 5% as claimed by [Seller] is justified in any event.”</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |

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| 238. | 1375 (Switzerland) | Kantonsgericht Appenzell Ausserrhoden 09.03.2006 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“[Seller] demands 5 % default interest on the claimed amount since 20 October 2004. The purchase price becomes due at the time of handing over of the goods (Art. 58(1) CISG). If a party fails to pay the price, the other party is entitled to interest on the sum since the date of maturity (Art.78 CISG); any legal reminder is not necessary. In the case at hand, the goods were handed over on 20 September 2004. The invoice of 20 September 2004 (Claimant's exhibit No. 2) determines a time for payment of 30 days. It is therefore proven that the claim for interest arose on 20 October 2004 -- as determined by [Seller]. The CISG does not contain a provision concerning the interest rate. According to legal literature and case law, the extent of the interest rate is to be determined by the domestic law which is the law applicable to the contract under conflict of laws rules. [Seller] claims 5 % default interest which complies with the Swiss provision of Art. 104(1) OR and is thus not to be objected. This interest rate would also be justified if German law were applied.”</p> <p>(PIL = SWISS LAW = CREDITOR'S LAW)</p> |
| 239. | 227 (Switzerland) | Handelsgericht des Kantons Zürich 10.07.1996 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“2. Plaintiff [Seller] changed its claim for interest in its replication and claims interest on the main claim at a rate of 9 % since 5 August 1994 (act. 30 p.2). According to Art. 78 CISG, the creditor is entitled to interest without connection to a claim of compensation under Art. 74 CISG if the other party fails to pay the price or another due sum. Art. 78 CISG does not set forth the amount of interest. The rate of interest must therefore be determined according to the domestic law. This must be determined according to the rules of the law of conflicts of the forum. According to Art. 3(1) of the Hague Convention of 1955, a sales contract is subject to the law of the country in which the seller has its residence (Art. 118(1) IPRG). The seller is seated in Germany. Under Section 352(1) of the Commercial Code the legal rate in case of delay of payment in commercial contracts is 5 %. However, the legal rate of interest for delay of payment does not exclude the compensation for an actual higher damage according to the CISG. This results from the fact that in Art. 78 CISG it is expressly stipulated that a claim for interest is independent of a</p> |

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| | | | | | claim for compensation under Art. 74. Damages must be compensated if the seller is forced to take a bank credit at a higher rate of interest, which Plaintiff [Seller] does not only assert (act. 30 p. 11) but also proves (act.34). According to this, the claim for interest by Plaintiff [Seller] is stated from the service of the order of payment (9 August 1994).” (PIL = GERMAN LAW = CREDITOR’S LAW) |
| 240. | 899 (Switzerland) | Tribunal Cantonal Vaud 11.04.2002 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “b) Article 78 of the CISG compels the party that failed to pay the price or any other amount owed to the other party to pay interest on the amounts due, without prejudice to its liability for damages under Article 74 of the CISG. Article 78 does not specify the rate or the interest starting date. According to the common opinion of the doctrinal scholars, it falls upon the competent domestic law (in this case, French law) to rule the details of the obligation to pay interest, particularly in regard to the rate of interest [citation of Stoffel]. Neumayer and Ming do not agree on that and propose the application in any event of the rate charged in the place of business of the debtor [citation]. Absent any other reference to this subject-matter in the CISG, it is convenient to follow the latter opinion and to apply Article 104 of the Swiss Code of Obligations.” (PLACE OF BUSINESS OF DEBTOR) |
| 241. | 900 (Switzerland) | Handelsgericht des Kantons St. Gallen 11.02.2003 | SELLER'S COUNTRY: Switzerland (Claimant) BUYERS' COUNTRY: France (Respondents) | Purchase Price | “Pursuant to Art. 78 CISG, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it. As the CISG does not provide for the interest rate, it should be determined based on the national law that is found applicable pursuant to the conflict of laws provisions. Art. 104(1) OR provides for a 5 percent interest rate.” (PIL = SWISS LAW = CREDITOR’S LAW) |
| 242. | 333 (Switzerland) | Tribunal Cantonal Vaud 11.03.1996 | SELLER'S COUNTRY: Hungary (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “Article 78 CISG provides the principle for the payment of interest on any sums that are in arrears if the buyer delays the payment of the purchase price. The Convention, however, provides neither the rate nor the date for calculation of the interest, their determination being left to the applicable national law. The only disputable obligation in the present case is that of the |

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| | | | | | <p>buyer which is established in Switzerland. It is appropriate to refer to the rate applied in the place of establishment of the debtor. In these conditions and without Hungarian law being invoked, there are grounds to apply Swiss law. Interest rate, thus, must be fixed according to the Swiss legal rate of 5 percent per annum (Art. 104 para. 1 of the CO).”</p> <p>(PLACE OF BUSINESS OF DEBTOR)</p> |
| 243. | 720 (Switzerland) | Kantonsgericht Zug 12.12.2002 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Avoidance, claim for difference between sales price and substitute transaction | <p>“Therefore, the interested rate determined by the respective national law is owed. The interest rate in the present case is determined by German law (Art. 117(1) and (3)(a) IPRG). Under § 352(1) HGB, the interest on arrears for commercial transactions is 5%. A higher interest is only owed if the creditor proves that [seller] was in fact - due to the debtor's delay - obliged to pay interest on debts at this rate, or that it lost this amount in interest on investments. The [seller] asserts that the interest on arrears claimed at the rate of 10.5% corresponds to the interest on debts payable at the time for [seller]'s US Dollar account with the UBS bank in Geneva. The [buyer] did not dispute this submission. Therefore, the interest rate payable on the [seller]'s claim from 23 January 2001 lies at 10.5%.”</p> <p>(INTEREST AS DAMAGES)</p> |
| 244. | 233 (Switzerland) | Tribunale d'appello Ticino 12.02.1996 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>8. Article 78 of the CISG provides that the buyer, if it fails to pay the price, must pay interest accrued on it. Interest is due since the price is due and not only when a demand for payment has been made.</p> <p>The CISG is silent on the issue of default interest, which results in the application of the law that would otherwise apply absent the Convention (Weber, id.). In the present case, since the parties did not choose the applicable law, the connection criterion must be applied, which leads to the application of the law of the seller (article 117, cpv. lit a LDIP), that is, the Italian law. According to Article 1284 Cc [Civil Code of Italy], as modified as of 16 December 1990, the legal interest rate is equal to 10% per year.</p> <p>(PIL = ITALIAN LAW = CREDITOR'S LAW)</p> |
| 245. | 961 (Switzerland) | Amtsgericht Willisau | SELLER'S COUNTRY: | Purchase price | “If a party fails to pay the price or any other due amount, the |

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| | | 12.03.2004 | Germany (Seller's Assignee Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | assigned | other party is entitled to interest on these amounts (Art. 78 CISG). There are no further prerequisites than the due date and the non-performance for the claim of interest. Especially, a reminder by the creditor is not necessary. Also an exemption of the debtor under Art. 79 CISG is not possible. The exemption of the debtor under Art. 79 CISG does only lead to a lapse of the claim for compensation, but the creditor can still rely on any other legal remedy. The payment of interest under Art. 78 CISG is not compensation and it is therefore independent of the question whether the debtor can justify its delay of payment according to Art. 79 CISG. Undisputedly, [Buyer] only paid the invoices one year after the due date. It is therefore obliged to pay interest for the period of time from the due date to the date of payment of the claim. ... To conclude, [Buyer] owes [Seller's Assignee] the requested interest for late payment on the amount of the invoice of DM 128,906.20 at a rate of 5% from 4 June 1998 to 18 June 1999. The rate of interest of 5% is not contested.” (NO EXPLICIT RULE) |
| 246. | 1726 (Switzerland) | Cour de Justice de Genève 12.05.2006 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “Pursuant to Article 53 CISG, the buyer undertakes to pay the price for the goods and take delivery for them as required by the contract and this Convention. With respect to payment for the goods, the buyer must pay the price on the date fixed by or determinable from the contract, without the need for any request or compliance with any formality on the part of the seller (art. 59 CISG). The seller may require the buyer to pay the price, unless the seller has resorted to a remedy which is inconsistent with this requirement (art. 62 CISG). The seller is entitled to interest on the sum that is in arrears (art. 78 CISG), the applicable interest rate being that of the debtor's place of business.” (DEBTOR'S PLACE OF BUSINESS) |
| 247. | 27 (Switzerland) | Pretore della giurisdizione di Locarno-Campagna 16.12.1991 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “Although the Claimant invoked Swiss law, the court, applying article 118 of the Swiss Federal Act of Private International Law and article 3 of the Hague Convention on the Law Applicable to International Sales Contracts on Movables of 15 June 1955, held that CISG was applicable as the applicable |

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| | | | | | <p>French law. The court granted the Claimant interest on the sum owed from the time of the conclusion of the contract since article 78 CISG did not refer to any formal or informal notice of default. In order to determine the interest rate, the court applied French law, since CISG does not provide for a specific interest rate, and granted interest at the rate of 6%, as requested by the Claimant, on the ground that it was lower than the statutory interest rate under French law.”</p> <p>(PIL = FRENCH LAW = CREDITOR’S LAW)</p> |
| 248. | 1741 (Switzerland) | Handelsgericht des Kantons Aargau 19.06.2007 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | <p>“The CISG does not contain any rule on the appropriate interest rate. Moreover, the parties have not reached any agreement to that effect. Art. 7(2) CISG provides that, in this case, the question is to be settled in conformity with the law applicable by virtue of the rules of private international law. ... , a sale shall be governed by the domestic law of the country in which the vendor has his habitual residence at the time when he receives the order. Since [Seller] has its habitual residence in Switzerland, the interest rate is governed by Swiss law. The general provision on the default interest rate under Swiss law is contained in Art. 104 OR. Art. 104(3) OR provides that default interest may be calculated using a higher rate, if the usual bank discount rate at the place of payment exceeds 5%. ... [Seller] has proven that it has taken out an account current loan with its bank in the amount of Sfr. 193,712.00 at an annual interest rate of 7.125% plus credit commissions of 0.25% per quarter (exhibit 15). Consequently, [Seller] has successfully proven that it suffered additional loan costs. In this respect, [Buyer] is obliged to compensate [Seller] at a rate of 8.125%.”</p> <p>(LOAN INTEREST AS DAMAGES)</p> |
| 249. | 302 (Switzerland) | Tribunal Cantonal du Valais 20.12.1994 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“bb) In the present case, application of those rules of conflict of laws leads to the application of Italian law. This conclusion is also the result of the application of art. 117 LPIL; the principal obligation under the present contract (delivery of blocks of stone) is the [seller's] responsibility, whose place of business is in Italy. According to art. 1284 of the Civil Code of Italy, the rate of default interest is 10%, unless a higher rate is fixed by the parties. The [seller] in the present case claims the default</p> |

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| | | | | | interest at the rate of 8%. Therefore, it is possible to award a higher rate of default interest only if the Court rules ultra petita.” (PIL = ITALIAN LAW = CREDITOR’S LAW) |
| 250. | 957 (Switzerland) | Kantonsgericht Schaffhausen 20.10.2003 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “Based on conflict of laws provisions (i.e. Swiss IPRG referring to the Hague Convention), German national law (BGB) was used to determine the rate of interest. The Court ordered Buyer to pay Sfr 854,444 and 8.25 percent interest from 24 August 2001 on.” (PIL = GERMAN LAW = CREDITOR’S LAW) |
| 251. | 55 (Switzerland) | Zivilgericht Basel-Stadt 21.12.1992 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “The [seller] demands 9% interest since 28 March 1990. Under Article 78 CISG, a claim for interest may be raised if a party fails to pay the sales price or another due sum. The [seller] maintains that it had put the Respondent in default with the communication of 28 March 1990 (Annex 10 to Statement of Claim). The rate of interest is not provided for in the CISG. The CISG refers to the national law which the previously considered conflict of laws provisions refer to (cf. 2.). Under Para 352 of the Austrian Commercial Code, the rate of interest laid down amounts to 5%. However, this rate of interest only applies if no rate of interest was agreed between the parties. The general terms and conditions of trade of the [seller] which are printed on the back of the carbon copies of the letters of confirmation of 24 February 1989 submitted by the [buyer] to the court (in English with a reference to the "German Translation" on the "preceding page") provide, in Number 4.6, for a rate of interest which exceeds the bank rate of the Austrian National Bank by at least 3.5% (Annex 4 to Respondent's plea). According to the prevailing legal theory in Austria, the general terms and conditions of trade are also valid if reference is first made to these in a confirmation. The Respondent does not in general contend that the General Terms and Conditions of Trade of the [seller] had not become contractual content. That the bank rate of the Austrian National Bank 1989 was 5.5% or more according to the General Terms and Conditions of Trade of the [seller] can, given the interest situation in Austria, be regarded as established. Therefore, it is |

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| | | | | | to be established that the 9% interest claimed by the [seller] was agreed upon. Thus the interest claim of the [seller] can also be awarded in full.” (CONTRACTUAL INTEREST RATE) |
| 252. | 1086 (Switzerland) | Kantonsgericht Nidwalden 23.05.2005 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Germany (Respondent) | Purchase Price | “That right to interest arises at the time the payment is withheld after the main claim is due. The time of maturity of the claim is to be determined in accordance with the parties' agreement or, if there is none, pursuant to Arts. 58 and 59 CISG (Brunner, supra, Art. 78 CISG, para. 4). However, the CISG is silent on the level of the interest rate payable. According to the prevailing opinion in literature and prevailing case law, this question is to be decided in accordance with the domestic law applicable pursuant to the conflict of law rules of the forum state. ... Since [Seller] has its seat in O., Switzerland, the interest rate has to be determined according to Swiss law. Thus, the default interest rate is 5% (Art. 104(1) OR“ (PIL = SWISS LAW = CREDITOR'S LAW) |
| 253. | 1532 (Switzerland) | Tribunal Cantonal du Valais 23.05.2006 | SELLER'S COUNTRY: France (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “Art. 78 CISG provides for the payment of interest for default without specifying the rate of interest (RVJ 1998 p. 140 consid.5b; 1995 p. 164 consid. 2c; Brunner no. 7 under Art 78 CISG). The interest rate thus has to be determined by the law applicable according to the rules of conflict of laws (Art. 7(2) CISG. In line with articles 118 LDIP and 3(1) of the 1955 Hague Convention on the Law Applicable to International Sales of Goods, this is once more the national law of the country in which the seller has his habitual residence at the time of receipt of the order, hence French law. According to Art. L.313-2 of the French Monetary and Financial Code, the legal interest rate is fixed by decree for the duration of one calendar year. Decree no. 201 of 10 March 2003 of 11 March 2003) fixed a legal interest rate of 3.29% for the year 2003. The rate for 2004 was fixed at 2.27% by decree of 13 February 2004 (published in the Journal Officiel of 15 February 2004), the rate for 2005 was fixed at 2.05% by decree of 10 February 2005 (published in the Journal Officiel of 17 February 2005) and, finally, the rate for 2006 was fixed at 2.11% by decree of 31 January 2006 (published in the Journal |

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| | | | | | Officiel of 17 February 2006). (PIL = FRENCH LAW = CREDITOR'S LAW) |
| 254. | 1091 (Switzerland) | Handelsgericht des Kantons Aargau 25.01.2005 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase price | “The applicable interest rate is not governed by the CISG itself. The question must be decided according to the domestic law applicable under the rules of private international law of the forum. Pursuant to Art. 118(1) IPRG the Hague Convention on the Law Applicable to International Sales of Goods of 15 June 1955 applies to sales of movable and tangible property. Art. 3(1) of the Hague Convention provides that in the absence of a determination by the parties of the applicable law, their contract will be governed by the domestic law of that state where the seller has his habitual residence at the time when he receives the purchase order. Since [Seller] is domiciled in Germany, the interest rate is determined according to German law.” (PIL = GERMAN LAW = CREDITOR'S LAW) |
| 255. | 68 (Switzerland) | Pretore della giurisdizione di Locarno-Campagna 27.04.1992 | SELLER'S COUNTRY: Italian (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | “In a Swiss-Italian sale of furniture at a price of 9,994,800 LIT, equal to 11,0435.60 Swiss Francs, CISG was applicable by way of Article 1(l)(b) and Swiss private international law. The parties had agreed upon Italian law, which was, in the opinion of the court, CISG, because of Article 1(l)(b). The Italian seller claimed the price plus 5% interest. The court said simply: "5% interest is justified." (ACCORDING TO CLAIM) |
| 256. | 2024 (Switzerland) | Kantonsgericht Zug 27.11.2008 | SELLER'S COUNTRY: Switzerland (Claimant) BUYER'S COUNTRY: Ireland (Respondent) | PURCHASE PRICE AND DAMAGES | “The CISG is silent on the interest rate. Therefore, the interest rate is determined by the applicable domestic law. In the present case, Swiss law is applicable to the interest rate, as the parties agreed upon the application of Swiss law in the Termination and Settlement Agreement ([Seller]'s exhibit no. 7). Pursuant to Art. 104(1) and (2) of the Swiss Code of Obligations, the debtor must pay 5% interest in case of a delay unless a higher interest rate was agreed upon in the contract. In lack of such a provision in the contract, [Buyer] must pay to [Seller] 5% interest on EUR 41,928.94 from 18 June 2003 and on EUR 33,641.05 from 25 June 2003. |

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| | | | | | <p>In addition, [Seller] requests 5% interest on the sum of EUR 2,000 from 29 October 2004. Under Art. 78 CISG, the only condition for payment of interest is that the sum must be in arrears (cf. para 7.3.). Regarding demands other than a demand for payment of the purchase price, the CISG does not expressly determine the due date. In lack of other indications, the baseline is that demands, like the request for compensation in the present case, are due upon accrual.”</p> <p>(PIL = SWISS LAW = CREDITOR’S LAW)</p> |
| 257. | 2025 (Switzerland) | Tribunal Cantonal du Valais 28.01.2009 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“5. a) The buyer still owes moratory interest from the due date of the purchase price, without request by the seller. Damages due under Art. 74 CISG, including those relating to the loss due to the currency exchange rate, are due from the occurrence of the damage and the interest starts to run the same time, in accordance with Art. 78 CISG. Article 78 CISG provides for default interest, without specifying the interest rate. The rate must be determined under the law applicable by virtue of the conflict of law rules of the forum (Art. 7(2) CISG). According to Art. 118 LDIP and article 3(1) of the Hague Convention of 1955 on the Law Applicable to International Sales of Goods. The applicable law is the domestic law of the country where the seller is domiciled at the time of receiving the respective order. In the present case, the application of these conflict-of-law rules points to German law. According to German law, the rate of the moratory interest is the base rate plus 5%.”</p> <p>(PIL = GERMAN LAW = CREDITOR’S LAW)</p> |
| 258. | 328 (Switzerland) | Tribunal Cantonal du Valais 28.10.1997 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“The interest rate was determined in application of the forum's rules of private international law, which led to Italian law (article 1024 Codice Civile).”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 259. | 413 (Switzerland) | Bundesgericht 28.10.1998 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“The claim for interest can generally be based on Art. 78 CISG. According to that, the party to the contract which fails to pay the price or any other amount due must pay to the other party interest on these amounts. However, as the interest rate is not regulated in the CISG, the national law that is, according to the rules of international private law, the law governing the</p> |

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| | | | | | <p>contract must be applied. In the present case, this is undisputedly German law, as the [Sellers] have their domicile in Germany. According to the judgment of the Canton Court, the default interest rate is 5% under section 252 of the German Commercial Code, while under the aspect of the default damage a higher interest damage exists if the creditor asserts the expenditure of credit interest under section 286 of the German Civil Code. This second question, which does not concern the interest rate, is not determined by application of German law but by application of the CISG. This is expressly reserved by Art. 78 CISG for a claim of damage according to Art. 74 CISG so that the creditor of the payment can assert default damages due to the usage of credit which exceeds the claim of interest. From the legal point of view, this is congruent with the result reached by the Canton Court, and by reference to their elaborations also the Court of Appeals. The Supreme Court is bound by the factual findings of the proceedings at the Canton Court which state that [Sellers] 1 and 2 used current account credit at an average rate of 10%. In the appeal, no admissible challenges of these factual findings have been put forward according to Art. 63(2) or 64 OG. [Buyer]’s assertion of a violation of Art. 78 CISG is therefore unfounded as far as it is admissible.”</p> <p>(LOAN INTEREST AS DAMAGES)</p> |
| 260. | 420 (Switzerland) | Tribunal Cantonal du Valais 29.06.1998 | SELLER'S COUNTRY: Italy (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“The interest rate on the purchase price was determined by application of the law governing the contract, which in this case was Italian law (article 7(2) CISG).”</p> <p>(PIL = ITALIAN LAW = CREDITOR’S LAW)</p> |
| 261. | 491 (Switzerland) | Kantonsgericht Zug 21.10.1999 | SELLER'S COUNTRY: Germany (Respondent) BUYER'S COUNTRY: Switzerland (Claimant) | Damages | <p>“According to Art. 78 CISG, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, from the due date. Interest accrues from the due date for claims of damages as well, i.e., from the original date of breach. It is a uniform opinion that the interest rate is governed by the law of the country which the rules of conflict of laws refer to as law of the contract”</p> <p>(PIL = GERMAN LAW = DEBTOR’S LAW)</p> |

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| 262. | 2432 (Switzerland) | Handelsgericht des Kantons Aargau 21.06.2011 | SELLER'S COUNTRY: Germany (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Payment of remaining purchase price | <p>“Was die Höhe des Verzugszinses angeht, findet sich ihm CISG keine Regelung. Die Frage ist nach demjenigen nationalen Recht zu entscheiden, welches durch das international Privatrecht des Forumstaats bestimmt wird. [...] Gemaess Art. 3 Abs. I HKÜ untersteht der Vertrag dem innerstaatlichen Recht des Landes, in dem der Verkäufer zu dem Zeitpunkt, an dem er die Bestellung empfängt, seinen gewöhnlichen Aufenthalt hat. Da die Klägerin als Verkäuferin ihren Sitz in Deutschland hat, ist die Höhe des Zinses nach deutschem Recht zu bestimmen.”</p> <p>(PIL = GERMAN LAW = CREDITOR'S LAW / HOWEVER CREDITOR CLAIMED LOWER INTEREST)</p> |
| 263. | 2429 (Switzerland) | Cour de Justice de Genève 20.05.2011 | SELLER'S COUNTRY: Switzerland (Respondent) BUYER'S COUNTRY: France (Claimant) | Termination, claim for damages and interest | <p>According to Art. 78 CISG, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to the right to ask for damages given under Art. 74 CISG. Interest accrues from the due date for claims of damages without notice. Damage and interest claims are due upon the occurrence of the damage. The interest rate is determined by the law applicable according to the rules of conflict of laws. In the case at hand, 212.929 € became payable at the time of the termination of the contract. The interest rate will be 5% (Art. 104 para. 1 CO) from 8 November 2005.</p> <p>(PIL = SWISS LAW = CREDITOR'S LAW)</p> |
| 264. | 1564 (Switzerland) | Handelsgericht des Kantons Zürich 25.06.2007 | SELLER'S COUNTRY: Austria (Claimant) BUYER'S COUNTRY: Switzerland (Respondent) | Purchase Price | <p>“Der Kaufpreisanspruch ist mangels besonderer Abrede fällig, sobald die Ware oder Dokumente dem Käufer zur Verfügung stehen (Honsell/Magnus, a.a.O., Art. 78 N 9). Die Lieferung der Druckaufträge erfolgte nach Darstellung der Beklagten am 21. Oktober 2004 (act. 7 S. 2), so dass der ab 1. November 2004 verlangte Zins ausgewiesen ist. Werklieferverträge unterstehen, soweit das Wiener Kaufrechtsabkommen nicht anwendbar ist, dem Recht des Herstellers und Veräußerers (Art. 117 IPRG), somit österreichischem Recht. Der gesetzliche Zinssatz beträgt bei Geldforderungen zwischen Unternehmen aus unternehmerischen Geschäften 8 Prozentpunkte über dem Basiszinssatz (§ 1333 Abs. 2 ABGB, § 352 UGB) und ist somit höher als die von der Klägerin</p> |

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| | | | | | <p>verlangten 5 %. Die Beklagte hat der Klägerin daher antragsgemäß auf der geschuldeten Summe 5 % Zins seit dem 1. November 2004 zu bezahlen.”</p> <p>(PIL = Austrian law = Creditor’s Law/HOWEVER CREDITOR CLAIMED LOWER INTEREST)</p> |
| 265. | 2433 (Switzerland) | <p>Tribunal de Martigny et St-Maurice Canton du Valais</p> <p>20.01.2011</p> | <p>SELLER'S COUNTRY: Belgium (Claimant)</p> <p>BUYER'S COUNTRY: Switzerland (Respondent)</p> | Rest of purchase price | <p>Art. 78 CISG provides for the payment of default interest, but does not specify the applicable rate, or the dies a quo. In case of dispute, the matter is governed by the law designated by the conflict of law rules of the forum State. Some jurisprudence and legal writers choose, for their part, for the purposes of the law of creditor - regardless of the fact <i>lex contractus</i> - while others favor the enforcement of the debtor, or even suggest to apply the <i>lex monetae</i> (FERRARI, op. cit, p. 198 to 200 and p. 205 to 207). However, a trend seems to be reflected in favor of the <i>lex contractus</i>, that is to say the law which would govern the contract if it was not subject to the CISG, so it is usually the interest rate of seller's country that will apply (FERRARI, op. cit., p. 207, which specifies that this solution corresponds to that provided by the Hague Convention on the law applicable to international sales of goods, 15 June 1955, and the law of the habitual residence of the party which make the "characteristic performance"). According to Belgian law - corresponding to the national law of the applicant and seller – does not provide legal interest due from the date of demand for payment, except in cases where the law practice is so (Art. 1153 al. 3 of the Belgian Civil Code).</p> <p>(PIL = Belgian Law = Creditor’s Law)</p> |
| 266. | 2427 (Switzerland) | <p>Cour de Justice de Genève</p> <p>15.01.2010</p> | <p>SELLER'S COUNTRY: Switzerland (Respondent)</p> <p>BUYER'S COUNTRY: India (Claimant)</p> | Avoidance, claim for damages and interest | <p>According to Art. 78 CISG, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to the right to ask for damages under Art. 74 CISG. Interest accrues from the due date for claims of damages without notice. Damage and interest claims are due upon the occurrence of the damage. The interest rate is determined by the law applicable according to the rules of conflict of laws.</p> <p>In the present case, the Court held that, for the claims that relate to the sale price promised a 5% interest in the October</p> |

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| | | | | | <p>25, 2005 and for the cost of additional storage, the interest at 5% of 31 October 2005, it is stipulated that the date corresponded to the date of payment of the invoice H. These features have not been disputed. They are, moreover, consistent with the provisions of the CISG and Art. 104 al. 1 CO, so that they can be confirmed.</p> <p>(PIL = Swiss Law = Creditor's law/PARALLEL TO CLAIM)</p> |
| 267. | 1689 (Ukraine) | <p>Donetsk Commercial Court</p> <p>13.04.2007</p> | <p>SELLER'S COUNTRY: Switzerland (Claimant)</p> <p>BUYER'S COUNTRY: Ukraine (Respondent)</p> | Purchase Price | <p>"Taking this into account, the court considers that the Seller's claim for payment of a lump sum of the debt adjusted by interest and commercial sanctions is legally sufficient. The Buyer's overdue performance of money obligation results in the obligation to pay the whole amount of the debt adjusted by 9 per cent interest on the whole amount within the time while the performance was overdue [...] [This conclusion is] based on Clause 3 of the Contract, subpart 5 Article 73, and Article 78 of the CISG."</p> <p>(CONTRACTUAL INTEREST RATE)</p> |
| 268. | 113 (USA) | <p>U.S. District Court, N.D. of New York</p> <p>07.09.1994</p> | <p>SELLER'S COUNTRY: U.S.A. (Respondent)</p> <p>BUYER'S COUNTRY: Italy (Claimant)</p> | Damages claim of buyer | <p>"14. Delchi is entitled to prejudgment interest pursuant to UNCCISG Article 78. Because Article 78 does not specify the rate of interest to be applied, the court in its discretion awards Delchi prejudgment interest at the United States Treasury Bill rate as set forth in 28 U.S.C. § 1961(a)."</p> <p>(US LAW = DEBTOR'S LAW)</p> |
| 269. | 1836 (USA) | <p>U.S. District Court, New Jersey</p> <p>15.04.2009</p> | <p>SELLER'S COUNTRY: Italy and United States (Claimants)</p> <p>BUYER'S COUNTRY: United States (Respondents)</p> | Purchase Price | <p>"As both parties acknowledge, the contract between Plaintiffs and Defendants is governed by the CISG. Article 78 of the CISG clearly states that in the event of non-payment or delayed payment by a party, the opposing party is entitled to prejudgment interest. Although the CISG does not provide for a specific rate of interest, Article 7(2) states that questions unresolved by the CISG are to be settled "in conformity with the general principles on which it is based," or, in the absence of such principles, "in conformity with the law applicable by virtue of the rules of private international law." Because there are no "general principles" of the CISG that might shed light on the interest rate to be used, the CISG having deliberately declined to select a specific rate, private international law must</p> |

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| | | | | | <p>be used.</p> <p>Courts that have previously turned to private law to consider the issue of prejudgment interest rates have focused their analyses on the source of the court's subject matter jurisdiction. When a court has diversity jurisdiction, it is appropriate for the court to perform an Erie doctrine analysis and determine which jurisdiction's law should apply to the issue at hand based on whether the law in question is substantive or procedural. <i>Erie R. Co. v. Tompkins</i>, 304 U.S. 64 (1938). However, when a court has federal question jurisdiction, relevant authority demonstrates that the court has "broad discretion to set a rate of prejudgment interest sufficient to compensate Plaintiff for the true costs of [the money] damages incurred." Frequently, federal courts have used the rate of the U.S. Treasury bill from the applicable time period to set the rate. This Court does not have diversity jurisdiction over the present matter, because there is incomplete diversity between the parties. <i>San Lucio U.S.A.</i> is a New Jersey corporation, as are all of the corporate Defendants. However, this Court does have federal question jurisdiction, because the dispute arises out of the CISG, an international treaty. Therefore, this Court has broad discretion to select the rate of prejudgment interest to be used and will set the rate in accordance with the yield on the U.S. Treasury bill from the applicable time period.</p> <p>(US LAW = DEBTOR'S LAW)</p> |
| 270. | 1771 (USA) | U.S. District Court, S.D. of Florida 19.05.2008 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | Purchase Price | <p>"The Claimant also seeks pre-judgment interest under Florida law. The CISG is silent on the issue of interest. Because substantive domestic law does not apply, the Claimant is not entitled to any interest. See <i>AIG Baker Sterling Heights, LLC v. American Multi-Cinema, Inc.</i>, 508 F.3d 995 (11th Cir. 2007) (explaining that the issue of availability and amount of pre-judgment interest on an arbitration award is governed by state law, not federal law); see also, <i>Osterneck v. E.T. Barwick Industries, Inc.</i>, 825 F.2d 1521, 1526 n.8 (11th Cir. 1987). The Claimant is not entitled to pre-judgment interest."</p> <p>(NOT RELEVANT / IGNORING ART. 78 / NO PRE-JUDGMENT INTEREST GRANTED)</p> |

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| 271. | 851 (USA) | U.S. District Court, N.D. of Illinois 21.05.2004 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: Canada (Respondent) | Purchase price | <p>"In contract disputes, Illinois follows the Restatement (Second) of Conflict of Laws, which refers courts either to a choice of law provision in the contract at issue, or to the place of performance. In this case, there is no choice of law provision found in the contract but performance undoubtedly took place in Illinois. The contract was one for the purchase of ribs and the ribs were delivered to Northam's agent in Illinois." "In Illinois, prejudgment interest, whether grounded in a statute or equity, is based on the concept of fairness and is awarded to make the Claimant whole for the loss of use of money wrongfully withheld." The Illinois Interest Act, 815 ILCS § 205, provides a statutory rate of 5% per annum, calculated from the time the money was due under the contract."</p> <p>(PIL = US LAW = CREDITOR'S LAW)</p> |
| 272. | 1776 (USA) | U.S. District Court, W.D. of Pennsylvania 25.07.2008 | SELLER'S COUNTRY: United States (Claimant) BUYER'S COUNTRY: Canada (Respondent) | Purchase Price | <p>"This Court will treat the instant dispute as a federal question, which it indisputably is, and apply its "broad discretion" to set a rate of prejudgment interest sufficient to compensate Plaintiff "for the true costs of [the] money damages incurred. . .". . . The Court finds that interest at the rate of 6 per cent per annum from the date of breach will be sufficient. So far as the Court can determine, Defendant breached on April 20, 2005, see Document No. 52-2 p. 103, and interest will accrue from that day until entry of judgment.</p> <p>(NO EXPLICIT RULE)</p> |
| 273. | 1682 (USA) | U.S. District Court, Kansas 28.04.2008 | SELLER'S COUNTRY: People's Republic of China (Claimant) BUYER'S COUNTRY: United States (Respondent) | | <p>"A federal rate of interest applies where jurisdiction is based on a federal question. 28 U.S.C. § 1961 applies to post-judgment interest, but the Court is not required to use this provision in calculating prejudgment interest; the calculation "rests firmly within the sound discretion of the trial court." When a federal statute is silent on a rate of interest, courts often look to state law. The Court therefore considers which interest rate would compensate Guang Dong for the delay in payment, and at the same time would not overcompensate Guang Dong by transforming the award into a punitive one. Guang Dong asserts that it is entitled to \$163,341.31 in prejudgment interest, based on its calculation using the 10% interest rate under Kansas law. But Guang Dong provides no evidence to the</p> |

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| | | | | | <p>Court that this is an equitable amount that will provide it with fair compensation for its delayed receipt of the arbitral award. The Court is persuaded by ACI that the federal post-judgment rate would more accurately compensate Guang Dong under these circumstances than the Kansas rate of 10%.”</p> <p>(NOT RELEVANT / ONLY POST-JUDGEMENT INTEREST AWARDED)</p> |
| 274. | 2240 (USA) | <p>U.S. Court of Appeals (3rd Cir.)</p> <p>09.11.2011</p> | <p>SELLER'S COUNTRY: Netherlands (Claimant)</p> <p>BUYER'S COUNTRY: United States (Respondent)</p> | Purchase Price | <p>“Restatement (Second) of Contracts § 354 (1981); see Fernandez, 548 A.2d at 1193. Where "damages are known or ... ascertainable through mathematical calculations," prejudgment interest is limited to the statutory rate of 6% per annum. On the other hand, if, as [Seller] argues, the CISG (an international treaty) governs the dispute, then we may treat the dispute as a federal question. 28 U.S.C. § 1331. And, assuming that this case presents a federal question, under our well-established precedent, the District Court had broad discretion in determining whether to award prejudgment interest. See <i>Ambromovage v. United Mine Workers of Am.</i>, 726 F.2d 972, 981-82 (3d Cir. 1984) ("In the absence of an explicit congressional directive, the award of prejudgment interest under federal law is committed to the trial court's discretion, and "given in response to considerations of fairness[,] ... [and] denied when its exaction would be inequitable.") Here, the jury determined that [Seller] breached its contract by failing to deliver shipments of styrene in a timely manner, and it awarded [Buyer] \$245,213.00 in compensatory damages. [Buyer] is thus a prevailing party in this litigation. The District Court was therefore within its discretion in awarding [Buyer] prejudgment interest. Where, as here, both the Claimant and the Respondent recover damages due to the breakdown of a contractual agreement, we find no inequity in awarding both parties prejudgment interest at the same statutory rate. Accordingly, we will affirm the District Court's decision to award [Buyer] prejudgment interest at a rate of 6% per annum.”</p> <p>(NO EXPLICIT RULE)</p> |