

TABLE OF CASES CITED

Forum	Date and Reference	Facts	Decision
AUSTRALIA			
Roder Zelt- und Hallenkonstruktionen GmbH v. Rosedown Park Pty Ltd et al, Federal Court of Australia	28 April 1995 SG 3076 of 1993; FED No. 275/95 http://cisgw3.law.pace.edu/cases/950428a2.html	A contract between a German Seller who sold tent hall structures to an Australian Buyer. Under the contract, the Buyer had to pay for the tents by instalments, however the Buyer fell into arrears and then went into administration. The Seller sued the Buyer claiming that it had retained ownership of the tents by virtue of a retention of title clause in the contract.	The CISG was held to be the governing law. However, the main issue was the property in the goods in question. The Court held the Romalpa/retention of title clause involved matters outside the CISG (and so applied domestic law to this issue), however still determined whether the ROT clause had been incorporated by reference to CISG formation provisions.
Perry Engineering Pth Ltd v Bernold AG, Supreme Court of South Australia	1 February 2001 [2001] SASC 15 SCGRG-99-1063 http://cisgw3.law.pace.edu/cases/010201a2.html	The Plaintiff, an Australian Buyer, sought damages from a Swiss Seller arising from a claim for breach of contract, negligence and under s 82 Trade Practices Act. Default judgment had been entered for the Plaintiff, however before handing down an order assessing damages the Judge realised that the CISG applied. He invited submissions however no submissions under the CISG were made.	Court found that the CISG applied and that as the Buyer had not argued under it the Court could not award damages based on the CISG.
Playcorp Pty Ltd v. Taiyo Kogyo Ltd, Supreme Court of Victoria	24 April 2003 [2003] VSC 108 No. 6056 of 1997 http://cisgw3.law.pace.edu/cases/030424a2.html	A Japanese company had a contract for the sale of radio controlled toys with an Australian Buyer. The agreement later ended, with the Buyer claiming the Seller repudiated the contract. The parties had chosen Australian law as the law governing the contract.	Court noted the applicability of the CISG, as part of Australian law included the CISG. However, as the Court had not been persuaded that a different outcome would result from application of the CISG, it held it unnecessary to apply the CISG. This conclusion was influenced by the implementing legislation, which stated that the CISG was to prevail over non-uniform domestic law where inconsistent.

Summit Chemicals Pty Ltd v. Vetrotex Espana SA, Court of Appeal, Western Australia	27 May 2004 [2004] WASCA 109 FUL 169 of 2003 http://cisgw3.law.pace.edu/cases/040527a2.html	Buyer brought action against Seller for supplying defective fibreglass. The Buyer claimed that the goods were not examined and that there was a lack of conformity. However, this was not raised until more than two years later.	Both parties relied upon domestic legislation during earlier proceedings. On appeal Art. 35 CISG was added to the claim. The Court held that the addition of the CISG did not create a new claim, and decided the matter on in accordance with domestic law. The domestic limitation period of six years was taken as relevant without cognizance of Art. 39 CISG.
Italian Imported Foods Pty Ltd v. Pucci Srl, New South Wales Supreme Court	13 October 2006 15801/2005 http://cisgw3.law.pace.edu/cases/061013a2.html	An appeal from the Magistrates' Court. An Italian Seller had agreed to supply preserved vegetables to an Australian Buyer. The Buyer refused to pay the price arguing that some of the goods had been defective. In earlier proceedings the case was argued and decided on the domestic Sale of Goods Act 1923, not the CISG.	The Buyer appealed the decision of the lower court and argued that the matter should be decided according to CISG. The Supreme Court, however, stated that the Buyer was attempting to raise a new matter at appeal. The Court noted that 'if the point had been raised [by the buyer] in the Court below, the defendant might have conducted its case differently'. The appeal was dismissed.
Olivaylle Pty Ltd v Flottweg GmbH & Co KGAA (No 4), Federal Court of Australia	20 May 2009 (2009) 255 ALR 632; [2009] FCA 522 http://cisgw3.law.pace.edu/cases/090520a2.html	An Australian Buyer and a German Seller had a contract for the sale of machinery for the processing of olive oil. The Buyer brought an action claiming that the machine did not work in accordance with specifications.	CISG was excluded by the words 'Australian law applicable under exclusion of UNCITRAL law'. The Court held that, by inserting the opt-out clause in the sale contract, the parties excluded the application of the CISG pursuant to its Article 6. The Court reasoned that 'UNCITRAL Law' referred to the CISG.
Attorney-General of Botswana v. Aussie Diamond Products Pty Ltd, Supreme Court of Western Australia	23 June 2010 [2010] WASC 141 CIV 1139 of 2008 http://cisgw3.law.pace.edu/cases/100623a2.html	An Australian company sold drilling rig to the Buyer from Botswana, but after payment was made, rig was not manufactured.	The court discussed the applicable law and came to the conclusion that Western Australian law was the governing law. The court was aware that the CISG forms part of the law of Australia and was applicable in this case. However the court noted that '[n]either party in this case has suggested that there are provisions of the Convention which require consideration, or that the provisions of the Convention would operate inconsistently with the application of the Act in the circumstances of this case, and the general law of Western Australia. Having regard to the way the case was run it is unnecessary to refer to the Convention further...?'

<p>Castel Electronics Pty Ltd v Toshiba Singapore Pte. Ltd., Full Court of the Federal Court of Australia</p> <p>Appeal from Federal Court of Australia, VID 141 of 2008, 28 September 2010, http://cisgw3.law.pace.edu/cases/100928a2.html</p>	<p>20 April 2011</p> <p>[2011] FCAFC 55</p> <p>http://www.globalsaleslaw.org/content/api/cisg/urteile/2219.pdf</p>	<p>The case involved a contract between an Australian Buyer and Singaporean Seller/manufacturer of television receivers (set-top boxes).</p>	<p>At trial, although Counsel advanced its argument ‘pursuant to the CISG and/or the law of Victoria’, and despite the judge referring to earlier cases such as <i>Playcorp</i> (above) and <i>Botswana</i> (above) in which domestic law had been applied despite the fact the CISG was acknowledged as the applicable law, the Court in fact applied the CISG. On appeal, the Full Court also applied the CISG.</p>
<p>Venter v Ilona MY Ltd; Ilona MY Ltd v MD Engineering Gesellschaft mit bescharanker Haftung, New South Wales Supreme Court</p>	<p>24 August 2012</p> <p>SC 2009/287072</p> <p>http://cisgw3.law.pace.edu/cases/120824a2.html</p>	<p>The Plaintiff (Australian Buyer) and her late husband had purchased a cruising motor yacht from the Respondent (German Seller). The husband had died in an accident on that yacht and the Plaintiff was suing in tort and breach of contract. The parties had sought to exclude the CISG by saying ‘The law of the Federal Republic of Germany shall apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 (CISG), Vienna Convention on International Sale of Goods) shall be excluded’.</p>	<p>CISG was found to not apply. Although not advanced by Counsel, the Court noted that there might have been scope for an argument as to whether the exclusion clause was correctly incorporated.</p>
<p>Severstal Export GmbH v Bhushan Steel Ltd, New South Wales Court of Appeal</p> <p>NB: High Court of Australia denied special leave to appeal (however, the CISG was not relevant to the application to appeal)</p>	<p>9 May 2013</p> <p>[2013] NSWCA 102</p> <p>2012/212667</p> <p>http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NWSCA/2013/102.html?stem=0&synonyms=0&query=Severstal%20Export%20GmbH</p>	<p>A Swiss Buyer sold hot rolled steel coils to an Indian Buyer. The issue on appeal before the court was to the removal of an order to restrain the Buyer from removing cheques from the country.</p> <p>Swiss law was chosen as the law of the contract.</p>	<p>It was agreed between the parties that the CISG was applicable as part of Swiss law (which the Court noted in obiter).</p> <p>However, this did not prove relevant. The Court found that no evidence as to how a Swiss court would deal with a freezing order brought before the court, and consequently the appeal was dismissed (likely in accordance with Australian equitable principles).</p>

AUSTRIA			
Oberster Gerichtshof [Supreme Court]	22 October 2001 1 Ob 77/01g http://www.cisg.law.pace.edu/cases/011022a3.html	A Hungarian company, the plaintiff, sold gasoline to an Austrian Buyer under a contract governed by Austrian law.	The Court found that the CISG applied. It held: ‘an implicit exclusion may only be assumed if the corresponding intent of the parties is sufficiently clear. If it cannot be established with sufficient clarity that an exclusion of the Convention was intended (taking into account the criteria provided by Art. 8 CISG for the interpretation of a party's statements and other conduct), then the CISG is to be applied’
Oberster Gerichtshof [Supreme Court]	26 January 2005 3 Ob 221/04b http://cisgw3.law.pace.edu/cases/050126a3.html	A Yugoslavian Seller sold mushrooms to an Austrian Buyer. An issue of non-conformity arose. The Seller claimed that signature upon arbitration agreement with choice of law in favour of Yugoslavia was forged, and that oral testimony of the Buyer to the contrary was falsified.	As fraud does not preclude recognition in Austria, even if the award had been quashed for reasons of public policy in the country where (or under whose law) it had been issued, this would not necessarily affect its recognition or enforcement in Austria. The clause regarding the choice of law in Yugoslavia was therefore valid and the CISG was not precluded via Art 6.
Oberlandesgericht [Appellate Court](OLG) Linz The matter was appealed to the Supreme Court (see below)	23 January 2006 6 R 160/05z http://cisgw3.law.pace.edu/cases/060123a3.html	Austrian Seller sold a car to German Buyer, however car was found to be defective. The contract stated that Austrian law was applicable. The contract, however, expressly mentioned that the Austrian HGB would apply to non-conformity. The Seller argued that the CISG did not apply at all.	The Court found that the CISG did apply as it forms a part of Austrian law. It found that the Parties had derogated from non-conformity provisions of CISG by expressly mentioning the domestic non-conformity provisions of Austrian law (HGB) in their contract. Therefore partial waiver of the CISG was found. Further, mere reference to HGB in standard terms relating to guarantees does not amount to exclusion. The mere fact parties are not aware the CISG applies does not amount to implicit waiver, and onus of proof of exclusion lies on party arguing in favour of it.
Oberster Gerichtshof [Supreme Court] Appeal from OLG Linz 23 January 2006 (above)	4 July 2007 2 Ob 95/06v http://cisgw3.law.pace.edu/cases/070704a3.html	An Austrian Seller sold a new car with certain supplementary equipment to a German Buyer. The car had major defects and the Seller refused to replace the automobile as the Buyer requested. As such the Buyer initiated proceedings. The contract mentioned the Austrian Commercial Code (HGB).	The Supreme Court overturned the Appellate Court on appeal. The CISG did not cover issues of warranty and did not apply. The Court also found that the mere reference to a particular law, such as the Austrian Consumer Protection Act and the Austrian Commercial Code, was an implied exclusion of the CISG.

<p>Oberster Gerichtshof [Supreme Court]</p> <p>Previous litigation: 1st instance LG Steyr (GZ 4 Cg 146/05m-45) 29 January 2008</p> <p>2nd instance OLG Linz (GZ 3 R 46/08t-49) 25 July 2008</p>	<p>2 April 2009</p> <p>8 Ob 125/08b</p> <p>http://cisgw3.law.pace.edu/cases/090402a3.html</p>	<p>Austrian Seller sold a boiler to a German Buyer. The contract contained a clause which said all provisions were subject ‘exclusively to Austrian law, except the rules on conflict of laws, and the CISG’.</p> <p>The boiler failed to work and litigation commenced. When deciding on the relevant law, the Seller argued that there was a typing error, and in the standard terms there should not have been a comma between the words “and” and “CISG”.</p>	<p>The Appellate Court had considered itself obliged to consider party submissions in accordance with §182a ZPO and thus not to render a ‘surprise’ judgment unless it first gave opportunity to the parties to address a matter overlooked. The Appellate Court had assumed the CISG applied and therefore infringed this duty.</p> <p>The Supreme Court then held that the CISG was inapplicable based on careful analysis of the original contractual clause, and by reason of the manner in which the case had been conducted by the parties. The Court noted that a mere reference to the national law of a Contracting State will not constitute an exclusion of the CISG. The reference to the law of Austria included the CISG. However, in the present case it was assumed that the exclusion of the application of both private international law and CISG was the intention of the parties. This was inferred from the fact that the parties referred to the HGB.</p>
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BELGIUM

<p>International Chamber of Commerce (ICC) Arbitration Award No. 12365/2004</p>	<p>February 2004</p> <p>12365 of 2004</p>	<p>Norwegian Seller sold cement products to a Belgian company.</p>	<p>Held that CISG was applicable under Art. 6.</p>
<p>NV Van Heygen Staal v. GmbH Stahl- und Metallhandel Klockner, Hof van Beroep [Appellate Court] Gent</p>	<p>20 October 2004</p> <p>1999/AR/9</p> <p>http://cisgw3.law.pace.edu/cases/041020b1.html</p>	<p>German Plaintiff sold steel coils to Belgian Defendant under a contract applying German law. Buyer refused to accept delivery and Seller sued for fundamental breach.</p>	<p>CISG applicable via Art. 1(1)(b), as choice of German law includes the CISG.</p>

CANADA

<p>Beechy Stock Farm Ltd v. Managro Harvestore Systems Ltd, Court of Queen’s Bench for Saskatchewan</p>	<p>3 April 2002</p> <p>QB02152;QB 2370/97JCS</p> <p>http://cisgw3.law.pace.edu/cases/020403c4.html</p>	<p>A German manufacturer contracted with a Canadian distributor to sell a livestock feeding system to a Canadian company (Plaintiff) under a contract to be governed by German law. The contract contained a clause excluding CISG.</p>	<p>The relevant clause stated that “[t]he application of the Vienna Convention on Contracts for the International Sale of Goods (CISG) is excluded. Instead, German law is agreed upon to be the basis of this contract as far as not these General Conditions of Sale stipulate anything different.” The Court found that this amounted to an exclusion of the CISG.</p>
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<p>Houweling Nurseries Oxnard, Inc. v. Saskatoon Boiler Mfg. Co. Ltd, Court of Queen's Bench for Saskatchewan</p>	<p>14 March 2011 Q.B. No. 113 of 2003 http://cisgw3.law.pace.edu/cases/110314c4.html</p>	<p>A Canadian company sold boilers to American company. The contract tried to exclude domestic warranties under domestic sale of goods act in the choice of law clause.</p>	<p>The Court held that because the contract between the parties did not expressly exclude the applicability of the local sale of goods act, and so the implied warranties within it also applied to the contract. The Court made no mention as to why the CISG would not likewise be applicable to the dispute, despite its potential applicability being drawn to the Court's attention in the pleadings.</p>
CHILE			
<p>Industrias Magromer Cueros y Pieles SA v. Sociedad Agrícola Sacor Limitada Corte de Apelaciones de Punta Arena [Court of Appeals]</p>	<p>9 January 2007 173-2006 http://cisgw3.law.pace.edu/cases/070109ch.html http://www.cisgspanish.com/wp-content/uploads/2013/10/C.A.-Punta-Arenas-12.pdf</p>	<p>French Seller sold leather products to a Chilean Buyer.</p>	<p>Court held there had been tacit waiver of CISG under Art. 6 by failure to plead.</p>
<p>Industrias Magromer Cueros y Pieles SA v. Sociedad Agrícola Sacor Limitada, Corte Suprema [Supreme Court] (sub-nom Jorge Plaza Oviedo v. Sociedad Agrícola Sacor Limitada), Corte Suprema [Supreme Court] Related proceeding: Corte de Apelaciones de Punta Arena [Court of Appeals], 9 January 2007 (above)</p>	<p>22 September 2008 1782-2007 http://cisgw3.law.pace.edu/cases/080922ch.html</p>	<p>The Defendant, a Chilean company, sold wool hides to the Plaintiff, an Argentinian company, however the goods never arrived.</p>	<p>The Court found that silence of the parties in relation to the CISG during proceedings was to be construed as tacit exclusion of the CISG</p>

CHINA			
China International Economic and Trade Arbitration Commission (CIETAC), Shanghai Sub-Commission, Arbitration Award	24 March 1998 CISG/1998/03 http://cisgw3.law.pace.edu/cases/980324c1.html	A Chinese Seller had a contract with a British Buyer for hempseed.	The tribunal applied UK private international law and found that the CISG did not apply. It then concluded that Chinese law applied.
CIETAC Arbitration Award	23 May 2000 CISG/2000/11	A Korean company sold stainless steel to a Chinese company, and a deposit was paid. Dispute arose later as to which party was entitled to keep the deposit.	The parties expressly agreed that the CISG applies.
Gammatex International Srl v. Shanghai Eastern Crocodile Apparels Co. Ltd., Shanghai First Intermediate People's Court	21 August 2002 (2002) Hu Yi Zhong Min Wu (Shang) Chu Zi Di No. 32 http://cisgw3.law.pace.edu/cases/020821c1.html	The Plaintiff, an Italian company, sold clothes to the Defendant, a Chinese company.	It is unclear whether the court was unaware of the CISG's applicability, or was aware but did not apply it due to the parties' failure to raise it. There was no evidence or argument that the parties intended to exclude CISG.
CIETAC Arbitration Award	May 2006 CISG/2006/17 http://cisgw3.law.pace.edu/cases/060500c3.html	A Chinese Buyer had a contract for the sale of chemicals with a Seller from the Republic of Korea.	The tribunal found that the CISG was applicable; however as the parties had made references to the laws and regulations of China and international trade customs, they should be applied to matters not expressly settled by the CISG. Despite this, the Tribunal nevertheless applied such laws and regulations to matters that were governed by CISG.
Shanghai First Intermediate People's Court	22 March 2011 (2010) Hu Yi Zhong Min Si (Shang) Zhong Zi No. 2509	The Ukrainian Plaintiff purchased titanium products from the Chinese Defendant.	The parties' arguments at first instance were based only on Chinese domestic law. On appeal the Court upheld this as a choice of Chinese domestic law, concluding that this meant 'the parties agreed on the application of [Chinese domestic law] during the proceedings at 1st instance, thereby excluding the application of the CISG.'
CUBA			
Tribunal Supremo Popular (Sala de lo económico)[Economic Chamber of Peoples' Supreme Court]	16 August 2008 http://www.cisgspanish.com/seccion/jurispr	A South African Seller contracted with a Cuban Buyer for cell phone equipment. The case involved questions not only regarding the sale	On appeal, the Court held, in reference to Art. 6, that parties could exclude the CISG explicitly or implicitly by choosing to apply different rules, or by selecting the law of a non-signatory state. However, in

	udencia/cuba/	contract, but also concerning assignment of the letter of credit.	<p>this case, the contract had not explicitly excluded the CISG but had instead selected Cuban law, which in turn provides, as part thereof, for the application of the CISG.</p> <p>It also noted that in international commercial practice, a generic unspecific reference to a national law includes Conventions to which that country is party. The Court applied the CISG, and, in relation to assignment of the letter of credit, the Cuban Civil Code. It stated ‘mere reference to the domestic law of one of the states as applicable [should not suffice for purposes of Art. 6 exclusion], as this can be complementary to [the CISG], ...[and where it is required of] this court to rule on the application of domestic law ... supplementary to the Convention. ..., [the Court] does so taking care not to unnecessarily or capriciously duplicate the regulatory framework that [the CISG] offers, or to threaten the unifying function that it is called to fulfil, but in the spirit of the need to find in the domestic law an endorsement of the remedies that the Convention itself provides; accordingly the choice of domestic law remains valid and effective as determined by the law to be used in accordance with the principles of the Convention itself, in order to fill gaps within it.’</p>
FRANCE			
ICC Arbitration Award No. 8453/1995, Court of Arbitration of the ICC	<p>October 1995</p> <p>8453 of October 1995</p> <p>http://cisgw3.law.pace.edu/cases/958453i1.html</p>	The contract involved the sale of a machine for medical purposes under a contract governed by French law.	The Court held that ‘[b]oth parties agree that the contract is subject to French law and neither party referred to CISG’, and therefore that the CISG ‘was considered inapplicable’ by the agreement of the parties implicit in their litigation strategy.
<p>Cour d’appel de Colmar</p> <p>The case was appealed (below)</p>	<p>26 September 1995</p> <p>1B 94-00488</p>	A French Seller sold ceramic baking dishes to an Irish Buyer, under a contract which stated the law of a Contracting State as applicable.	Court ruled against applicability of CISG despite parties having selected law of a Contracting State, citing Art. 6.

Sté Ceramique Culinaire de France v. Sté Musgrave Ltd, Cour de Cassation [Supreme Court] Appeal from Cour d'appel de Colmar, 26 September 1995 (above)	17 December 1996 Y 95-20.273 http://cisgw3.law.pace.edu/cases/961217f1.html		Held that the CISG 'applies at the outset; its applicability is not subordinated to the will of the parties, express or tacit'.
Société Muller Ecole et Bureau v. Société Federal Trait, Cour de Cassation [Supreme Court]	26 June 2001 http://cisgw3.law.pace.edu/cases/010626f2.html	Unavailable	Court found that while French judges must apply the CISG as the substantive law of French international sales, the parties had tacitly excluded under Art. 6 by 'failing to invoke the [CISG] before the French court'.
Cour d'appel Paris	6 November 2001 2000/04607 http://cisgw3.law.pace.edu/cases/011106f1.html	A German Seller sold cables to a French Buyer. The Buyer later claimed the cables were defective. The Buyer's standard terms stated that French law would apply. These terms had not been communicated to the Seller.	The Court stated that a party must prove to the court that the CISG had been expressly waived by the parties in order for it not to apply.
Cour d'appel Versailles	19 February 2004 03/04706 http://cisgw3.law.pace.edu/cases/040219f1.html	A Seller from France had a contract with a Buyer from Venezuela. A dispute arose around the claim of fundamental breach of contract.	CISG held to be applicable.
Cour de Cassation [Supreme Court]	25 October 2005 Arrêt no. 1388 FS-P; Pourvoi no. U 99-12.879 CISG-online 1098	A Tunisian Seller sold weed killer to a French Buyer, who later argued that the weed killer was defective. The matter was on appeal. The parties had argued at first instance under French domestic law.	Court held 'that by invoking and discussing, without any reservation, the [French Civil Code] all of the parties ... voluntarily placed the resolution of their dispute under French domestic law' by exclusion under Art. 6. Thus absence of reference during oral arguments is no longer conclusive in the current approach of the French Supreme Court, although absence in both pleadings and oral argument is still relevant'.

<p>Société Anthon GmbH & Co. v. SA Tonnellerie Ludonnais, Cour de Cassation [Supreme Court]</p>	<p>3 November 2009</p> <p>Pourvoi no. T 08-12.399</p> <p>http://cisgw3.law.pace.edu/cases/091103fl.html</p>	<p>A German Seller sold stove manufacturing machines to French Buyer, who then sued after Seller purported to avoid the contract. Despite Seller's arguing under both French domestic law and CISG, the first instance court held that the Seller would need to prove applicability of CISG before arguments thereunder could be entertained, and thus applied French domestic law alone.</p>	<p>Overturned the lower court's determination that 'the parties to the dispute thus recognized that the applicable provisions are those of the French Civil Code' based on the fact that while the Seller had pleaded CISG provisions 'it had not requested the application of the [CISG] before the court'. It held that the CISG applied not only through Art. 1(1), but because the parties had evinced an actual intention during proceedings to apply CISG, by virtue of their reliance upon it.</p>
GERMANY			
<p>Landgericht [District Court] (LG) Landshut</p>	<p>5 April 1995</p> <p>54 O 644/94</p>	<p>A German company sold sports clothing to a Swiss company under a contract that was silent on the applicable law. A dispute arose as the sportswear shrunk by approximately two sizes when washed.</p>	<p>The Court noted that the fact that both parties based their case on BGB 'does not change anything' and that '[t]he parties can only exclude the application of the CISG by explicit agreement'. However, the Court held that the CISG did not cover Seller's failure to take back the goods and Art. 31 CISG was not applicable by analogy, nor could this matter be settled on the basis of the general principles per Art. 7(2). Therefore the Court referred to national law - German law, applicable by virtue of the rules of private international law.</p>

<p>Landgericht [District Court] (LG) München</p>	<p>29 May 1995 21 O 23363/94</p>	<p>German Seller entered into contract with Swiss Buyer for computer hardware. Buyer failed to pay the price after delivery and Seller sought action for recovery of the price. Seller claimed that the regular contracts between the two parties were always governed by German law to the exclusion of the CISG.</p>	<p>The Buyer failed to advise of a willingness to defend itself and a default judgment was made against it.</p> <p>However, in regards to the choice of law, the Court found against the Seller's submissions to find that an oral agreement not evidenced in writing was sufficient for the Seller to prove the existence of a choice of forum agreement meeting the requirements of Arts 17, 53 Lugano Convention.</p> <p>Therefore, the question relating to the contract was to be decided in accordance with German law, established via the rules of private international law, which included the CISG.</p>
<p>Oberlandesgericht [Appellate Court] (OLG) Hamm</p>	<p>9 June 1995 11 U 191/94</p>	<p>The Italian Seller sold window parts to German Buyer. Some of the goods were defective and the Seller replaced them, however, the Buyer withheld a portion of the payment as set-off. The contract contained a choice of law of German law.</p>	<p>The Court held that German law includes the CISG. By choosing German law, the parties chose the CISG. The Court also stated that litigation exclusively based on BGB provisions implied a choice of German law, which is also why the CISG applied. Nevertheless as set-off is not regulated by the CISG, German domestic law was applied to resolve the issue of set-off.</p>
<p>Landgericht [District Court] (LG) Düsseldorf</p>	<p>11 October 1995 2 O 506/94 http://cisgw3.law.pace.edu/cases/951011gl.html</p>	<p>A Danish company sold a generator and its spare parts to a German company. The spare parts failed to arrive by mistake, and the generator did not perform the required functions.</p>	<p>The CISG is applicable in accordance with Art. 1(1)(a) CISG. The CISG was not excluded by the parties. The use of using a term that prescribed that the laws of the Federal Republic of Germany exclusively apply leads to the application of the CISG, not the exclusion of it. The ULIS would not have applied in any regard, as that law had been substituted by the CISG, effective 1 January 1991.</p>
<p>Bundesgerichtshof [Federal Supreme Court] (BGH) ("Benetton I case") Proceedings related to the case of 'Benetton II' – below.</p>	<p>23 July 1997 VIII ZR 130/96 CISG-Online Case No 285 http://cisgw3.law.pace.edu/cases/970723gl.html</p>	<p>Italian Seller had a contract with a German Buyer for the sale of fashion textiles. During proceedings parties stated German law excluding the CISG should apply and did not object to the application of BGB upon appeal.</p>	<p>As the parties had chosen the application of German law to the exclusion of the CISG under Art. 6 CISG, the court did not consider the CISG applicable.</p>

<p>Bundesgerichtshof [Federal Supreme Court] (BGH) (“Benetton II case”)</p> <p>Proceedings related to the case of ‘Benetton I’ – above.</p>	<p>23 July 1997</p> <p>VIII ZR 134/96</p> <p>http://cisgw3.law.pace.edu/cases/970723g2.html</p>	<p>Italian Seller had a contract with a German Buyer for the sale of fashion textiles. The Buyer had refused to pay the purchase price of the goods claiming the contract was void as it violated European and German antitrust laws.</p>	<p>The CISG applied as the parties chose the applicability of German law without excluding the CISG. The agreed upon reference to certain national sales law provisions will not lead to a finding of an implied intent to exclude the Convention since the appellate court ascertained that the defendant had expressly adhered to application of the CISG during the oral court hearing in the second instance proceedings.</p> <p>As the CISG is not concerned with validity, non-uniform German domestic law governed those issues, as the applicable law by virtue of the rules of private international law.</p>
<p>Bundesgerichtshof [Federal Supreme Court] (BGH)</p>	<p>25 November 1998</p> <p>VIII ZR 259/97</p>	<p>German Seller sold surface protective film to Austrian Buyer, under a contract governed by German law. Film left glue residue on images, Buyer paid to have glue removed, notified Seller within 24 hours of delivery of the non-conformity, and brought action for reimbursement of these expenses.</p>	<p>The Appellate Court had dismissed Buyer’s action. The Supreme Court reversed the Appellate Court’s decision and allowed the Buyer’s claim.</p> <p>It confirmed that the CISG is applicable if the parties have chosen, even by means of standard contractual provisions, the law of a Contracting State to govern their contract (Art. 1(1)). German law was held to incorporate the CISG. The court found that the Seller had waived its right to rely on Arts 38 and 39 CISG.</p>
<p>Oberlandesgericht [Appellate Court] (OLG) Dresden</p>	<p>27 December 1999</p> <p>2 U 2723/99</p>	<p>A Dutch Seller sold chemicals to an American Buyer, who had a branch office in Germany. Certain invoices were not paid by Buyer, and Seller sought payment plus interest.</p>	<p>The CISG was applicable via Art. 1(1), and there was an absence of conclusive exclusion. The Court stated that ‘[t]he fact that the parties at first instance based their dispute on national German law does not lead to a different result’.</p>
<p>Oberlandesgericht [Provincial Court of Appeal] (OLG) Frankfurt</p>	<p>30 August 2000</p> <p>9 U 13/00</p> <p>http://cisgw3.law.pace.edu/cases/000830g1.html</p>	<p>A Swiss Seller sold yarn to a Buyer from Germany. The contract contained a choice of Swiss law.</p>	<p>The CISG had not been excluded as Swiss law contained the CISG. The Court stated ‘[t]he parties did not validly exclude the application of the CISG through the remark contained on the [plaintiff]’s invoices that “all transactions & sales are subject to Swiss law.” Due to its ambiguous wording this clause cannot lead to an exclusion of the CISG, as the CISG is Swiss law. An effective agreement to apply Swiss national law would require that the relevant Swiss Code was named.’</p>

Oberlandesgericht [Appellate Court] (OLG) Rostock	10 October 2001 6 U 126/00	French Seller sold frozen food to German Buyer, and whilst no choice of law clause was contained within the contract, parties referred to specific provisions of German law, and both parties were taken to assume that German law applied.	As the parties did not make an express choice to the contrary, the CISG applies via Art. 1(1)(a).
Landgericht [District Court] (LG) Saarbrücken	2 July 2002 8 O 49/02 http://cisgw3.law.pace.edu/cases/020702gl.html	The contract was between an Italian Seller and a German Buyer for the purchase of tiles. The parties made submissions with reference to the BGB and HGB.	The CISG was applicable. Court found that: ‘The fact that the parties in their written pleadings argue with reference to provisions of BGB and HGB, does not conflict with that since this practice does not imply a tacit exclusion of the UN Sales Convention’.
Oberlandesgericht [Appellate Court] (OLG) Zweibrücken	2 February 2004 7 U 4/03 http://cisgw3.law.pace.edu/cases/040202gl.html	German Seller sold milling equipment to Iranian Buyer, which was allegedly non-conforming. The contract was in favour of German law.	Court held that the parties did not exclude the CISG. The Court said: ‘the mere fact that the parties were not aware of the applicability of the CISG and therefore cited the provisions of national German Law [at first instance]... is not to be considered as sufficient’.
Landgericht [District Court] (LG) Saarbrücken	1 June 2004 8 O 118/02 http://cisgw3.law.pace.edu/cases/040601gl.html	The contract involved the sale of pallets between a Polish Seller and a German Buyer. The Buyer discovered that the pallets had not originated from Poland and so gave notice of non-conformity.	The Court applied the CISG as both Poland and Germany are Contracting States. The Court also noted that ‘[t]his is not contradicted by the fact that the parties argued in their pleadings referring to provisions of the Polish ([Seller]) and German ([Buyer]) law, as that action, in itself, does not lead to an implicit exclusion of the UN Sales Law’.
Landgericht [District Court] (LG) Kiel	27 July 2004 16 O 83/04 http://cisgw3.law.pace.edu/cases/040727gl.html	The Dutch Seller sold fat for frying to the German Buyer	The CISG applied as both parties have their place of business in a Contracting State. The parties may have chosen German law (this was contested) however the CISG is part of German law and so the CISG will not be excluded: ‘unless there are clear indications to the effect that the parties intended to apply solely the internal domestic sales law of the designated country.’
Landgericht [District Court] (LG) Bamberg	23 October 2006	Italian company sold plants to a German company, who claimed that the plants did not conform with the specifications in the contract.	Court held that application of CISG ‘does not conflict with the fact that the parties have argued merely with reference to provisions of German law in their memoranda, since such practice does not in itself lead to an implied waiver of the CISG under Art. 6 CISG’.

<p>Oberlandesgericht [Appellate Court] (OLG) Oldenburg</p> <p>Procedural history: First instance - Buyer sued Seller at the Landgericht (LG) [District Court] Osnabrück</p>	<p>20 December 2007</p> <p>8 U 138/07</p>	<p>German Buyer entered into a contract with a Spanish Seller for industrial car manufacturing tools. The orders for the goods also stated that the Buyer's standard terms would be a part of the contract; however the terms were not submitted. The standard terms contained a choice of law clause in favour of German law and the exclusion of CISG and German private international law, as well as choice of forum clause for exclusive jurisdiction in Osnabrück, Germany and that Buyer can sue at Seller's seat.</p>	<p>In ascertaining the incorporation of the standard terms the Appellate Court stated that '[r]ecourse must be taken to the CISG in order to assess whether the requirements for a valid introduction of standard terms are fulfilled.'</p> <p>The Appellate Court concluded that the District Court did not have international jurisdiction to adjudicate the present dispute. Consequently, [Buyer]'s action has to be dismissed as inadmissible from the outset.</p>
<p>Oberlandesgericht [Appellate Court] (OLG) Stuttgart</p>	<p>31 March 2008</p> <p>6 U 220/07</p>	<p>German Defendant sold a used car to Latvian Plaintiff, who wanted a car that had never been repainted. After the sale was concluded, at the Buyer's request, Seller wrote 'no repainted' on receipt. After delivery, Buyer discovered that the car had been repainted. No choice of law clause was included but parties agreed that German law would apply.</p>	<p>German law includes the CISG, and this is not changed by the failure of the parties to argue under the CISG at first instance.</p>
<p>Oberlandesgericht [Appellate Court] (OLG) Stuttgart</p>	<p>31 March 2008</p> <p>6 U 220/07</p> <p>http://cisgw3.law.pace.edu/cases/080331g1.html</p>	<p>A German Seller sold an automobile to a Latvian Buyer. The Buyer made a claim that the car did not conform to the contract as it had not been repaired by a professional and did not contain certain car accessories.</p>	<p>The Court found that the CISG had not been excluded, explicitly or tacitly. The CISG was incorporated into German law, and the parties had assumed German law would apply, which included the CISG. The Court also noted that an 'exclusion of the application of the CISG cannot be inferred from the fact that the standard terms of the [Seller] provided for German jurisdiction.'</p> <p>Both parties argued on the basis of the BGB in the Court of first instance but the court found this did not imply a post-contractual exclusion of the CISG in the absence of express declaration of intent. Application of the wrong provisions due to misapprehension was insufficient to meet this requirement.</p>

<p>Oberlandesgericht [Appellate Court] (OLG) Hamburg</p>	<p>19 December 2012</p> <p>6 Sch 18/12</p> <p>http://cisgw3.law.pace.edu/cases/121219gl.html</p>	<p>A Czech Buyer purchased dried onions from a German Seller in ongoing business relationship. The Seller claimed the parties' contract incorporated the Seller's standard terms. They provided an arbitration agreement and a choice of law clause in favour of German law, excluding the CISG.</p>	<p>To ascertain whether the standard terms were incorporated, the Court applied German law. The Court came to the decision to apply German law via either of two pathways: by applying German law through §1059 German Code of Civil Procedure; or by applying German law as the law chosen in the main contract.</p> <p>The Court then concluded that under German law the standard terms were incorporated, and as such the CISG was expressly excluded.</p>
<p>Oberlandesgericht [Appellate Court] (OLG) München</p>	<p>2 October 2013</p> <p>7 U 3837/12</p> <p>CISG-online Case No 2473</p> <p>http://cisgw3.law.pace.edu/cases/131002gl.html</p>	<p>Contract involving concentrated juice.</p>	<p>The parties' included a choice of law clause selecting "German law" in their contract. Respondent's claim was based on §376 HGB. The Court held that the parties have 'explicitly and unambiguously stipulated German law to apply' and consequently, the CISG was excluded.</p>
<p>Oberlandesgericht [Court of Appeal] (OLG) Naumburg</p>	<p>13 February 2013</p> <p>12 U 153/12</p> <p>http://cisgw3.law.pace.edu/cases/130213gl.html</p> <p>http://www.gl-obalsaleslaw.org/content/api/cisg/urteile/2455.pdf</p>	<p>German Buyer was part of a group of companies that manufactured bakery goods. Buyer entered into a contract with Swiss Seller to deliver poppy seeds. An offer to sell contained the words 'based on the conditions set by the NZV'. The conditions state that all contracts concluded under its terms shall be governed by Netherlands law and that the parties were to arbitrate. Buyer commenced proceedings in a German court claiming the terms were not incorporated, however Seller argued they were.</p>	<p>At first instance the District Court dismissed the Buyer's action claiming the parties had to go to arbitration. On appeal the Buyer raised the same arguments again, claiming primarily that the conditions did not form part of the contract.</p> <p>The Provincial Court of Appeal found that the parties had not concluded a valid agreement to arbitrate in that it did not comply with the formal requirements set out in §1031(1) ZPO. It also found that the CISG applies, as it is part of the law of Germany and the Netherlands. The Court then applied Art. 8 CISG to ascertain whether the standard terms were part of the contract and found that they were not. The matter was then remitted to the District Court to be resolved.</p>

HUNGARY			
Arbitration Court attached to the Hungarian Chamber of Commerce and Industry	8 May 1997 BH 1997/10; CLOUT 174; Vb/96038 http://www.szecskay.hu/dynamic/Bacher_Application_of_CISG_in_HUNGARY.doc	The Hungarian Seller and the Italian Buyer entered into a “Distributorship Agreement”. There were a series of agreements, with typical elements of agency and sale agreements. The contract also provided that ‘[a]ny lawsuit shall be decided according to the substantive law provisions of Hungary’.	The Hungarian Court of Arbitration had to ascertain whether the CISG was applicable and whether the agreements were for agency or the sale of goods. The framework contract was qualified as an agency agreement and the CISG held inapplicable. The other contracts were considered sale contracts. The Court construed the choice of law clause, and found that the CISG had not been excluded, since it was part of Hungarian civil law.
Hungarian Supreme Court (Curia)	2007 Gfv.IX.30.372 /2007/5 http://www.szecskay.hu/dynamic/Bacher_Application_of_CISG_in_HUNGARY.doc	A Hungarian Seller and a Polish Buyer had an agreement for the sale of sunflower seeds. The applicable law was the Civil Code of Hungary. A dispute arose regarding the payment of the arrears of the purchase price.	The Supreme Court applied the CISG despite the parties’ express choice of the Hungarian Civil Code. While the CISG may have been excluded tacitly, the interpretation of the intention of the parties to do so requires strong evidence suggesting they did in fact want to exclude the CISG.
ITALY			
Nuova Fucinati S.p.A. v. Fondmetall International A.B, Tribunale Civile [District Court] di Monza	14 January 1993 (Pace); 29 March 1993 (CISG Online) R.G. 4267/88 CISG Online no 102 http://cisgw3.law.pace.edu/cases/930114i3.html	This contract involved the sale of ferrochrome from an Italian Seller to a Swedish Buyer. The Seller failed to deliver the goods to the Buyer, who then wished to claim avoidance. The order confirmation stated “law: Italian law to apply”.	The CISG came into effect in Italy prior to the conclusion of the contract, but came into force in Sweden after the conclusion of the Contract, so therefore did not apply through Art. 1(1)(a). Regarding the choice of Italian law, the Court said: ‘[n]ow it is true that the law applicable to the contract is Italian law, by virtue of the explicit [choice of law] provision ... [in the] confirmation and it is also true that, because the Vienna Convention at this time was in force in the national system, it must be considered a law like any other law of this State. Nevertheless, because of the conditions that this "law" [i.e., the Convention] fixes for its application, we must consider the fact that the Convention came into force in Sweden after the conclusion of the contract as an obstacle to its application.’ The Court did not apply the CISG.

Tribunale Civile di Cuneo	31 January 1996 45/96	The French Seller delivered sports clothes to the Italian Buyer which were in French sizes rather than Italian sizes as agreed upon. Notice of this lack of conformity was given 23 days after delivery of the goods.	Court found that '[a]lthough the parties did not refer to the CISG, its rules must be followed by this Court from the principle <i>iura novit curia</i> '. The 23 day delay in notice for non-conformity was considered to be untimely.
Tribunale di Vigevano	12 July 2000 12 July 2000, n. 405 http://cisgw3.law.pace.edu/cases/000712i3.html	Italian Seller sold vulcanized rubber to a German Buyer. The Buyer's assignee brought a suit against the Seller claiming the rubber was of low quality. The parties made submissions in line with the Italian Civil Code and did not mention the CISG.	<p>The Court found that although the parties are free to exclude application of CISG, mere reference to domestic law in the parties' pleadings is not in itself sufficient to exclude the CISG. To this effect parties must first of all be aware that CISG was applicable and moreover intend to exclude it.</p> <p>The Court noted: '[t]hus according to the principle <i>iura novit curia</i>, it is up to the judge to determine which Italian rules should be applied... The fact that [parties] based their arguments exclusively on Italian domestic law without any references to the [CISG] cannot be considered an implicit manifestation of an intent to exclude.'</p> <p>The Court also stated that it is to be assumed that 'the parties wanted to exclude the application of the [CISG] only if it appears in an unequivocal way that they recognized its applicability and they nevertheless insisted on referring only to national, non-uniform law.'</p>
Tribunale di Padova	25 Feb 2004 40552 http://cisgw3.law.pace.edu/cases/040225i3.html	Austrian Seller brought suit challenging orders obtained by the Italian Buyer for failure to pay for a delivery of winter potatoes. There was a discrepancy between the parties as to which currency and which law was applicable to their dispute.	<p>Court held that 'by virtue of the principle of <i>iura novit curia</i>, it is for the judge to determine the applicable Italian rules', and '[f]urther, the silence in the pleadings on the matter of the applicability of the law at issue is immaterial because, in the presence of all requisites mentioned above [the CISG] is applicable by operation of law'.</p> <p>Pleadings referring only to non-uniform domestic law cannot of themselves amount to an exclusion of the CISG, as 'it must clearly show that [the parties] were aware of its applicability, and that they nonetheless insisted on referring only to the domestic rule'.</p>

Tribunale di Forli	16 February 2009	An Italian Seller sold cisterns to Egyptian Buy, however it emerged after delivery that the Buyer was not creditworthy.	CISG found to apply as result of Art. 1(1), as parties had not made express agreement to the contrary.
Tribunale di Forli	26 March 2009 CISG-online no. 2336 http://www.globalesaleslaw.org/content/api/cisg/display.cfm?test=2336	This case involved a contract between an Italian Seller and an Australian Buyer for the purchase of olives and vegetable oils. There was a choice of law clause in favour of Italian law. One party argued that the Court should apply Italian law in accordance with the clause, and the other party suggested that the court conduct an analysis of the rules of private international law.	The Court considered both parties' approaches when considering the applicable law. When considering the argument that private international law was the instrument to determine the applicable law, it first sought to establish if a uniform law was applicable (being the CISG). It then determined whether the CISG had been excluded by choice of Italian law by the parties. It found that the CISG was part of the law of Italy and therefore applied, and had not been excluded.
LATVIA			
Arbitration Court of Latvian Chamber of Commerce and Industry	7 July 2011 2011/144 http://www.cisgnordic.net/110707LV.shtml http://cisgw3.law.pace.edu/cases/110707L3.html	A Latvian Seller sued an Estonian Buyer for payment of the purchase price and interest on arrears. The parties had a contract for the sale of petroleum.	The Arbitration Court noted that the parties had stated in their contract that the law of Latvian Republic shall govern the contract. As the CISG was part of the law of the Latvian Republic, it governed this contract and had not been excluded by operation of Art 6.
MEXICO			
Georgia Pacific Resins, Inc. v. Grupo Bajaplay, S.A. de C.V, Fourth Panel of the Fifteenth Circuit Court [Federal Court of Appeals]	9 August 2007 225/2007 http://cisgw3.law.pace.edu/cases/070809m1.html	An American Plaintiff sold goods to a Mexican Defendant, which were allegedly defective. The Court of first instance held that the CISG had been waived because the parties relied on the non-uniform domestic law of Mexico in their arguments.	The Court found it was irrelevant whether or not the parties had mentioned the CISG because of the principle of law 'da mihi factur, dabo tibi ius' and principle of 'iura novit curia'. Thus the CISG was applied.

NEDERLANDS

<p>Hof's- Hertogenbosch [Appellate Court]</p>	<p>13 November 2007 C0401754 http://cisgw3.law.pace.edu/cases/071113n1.html</p>	<p>A contract between a Dutch Seller and English Buyer.</p>	<p>The Court of Appeal referred to Arts 6 and 8 CISG and held that the wording [what was the choice of law] used in Art. 15.1 of the standard terms of the Seller, which were “Netherlands law is exclusively applicable” sought only to apply the Netherlands Civil Code and no other (international) regulations. Had the Seller wished to apply the CISG, the use of a provision such as Art. 15.1 would have been superfluous.</p> <p>The Court also noted that the UK Buyer had itself in the first part of the proceedings had referred to the Netherlands Civil Code without referring to the CISG. It was only later in the proceedings that the Buyer applied the CISG while expressly indicating that it had, up until that point, understood that the Netherlands Civil Code would apply instead of the CISG.</p>
<p>Eyroflam SA v. PCC Rotterdam BV, Rechtbank [District Court] (Rb) Rotterdam</p>	<p>15 October 2008 295401 / HA ZA 07-2802 http://cisgw3.law.pace.edu/cases/081015n2.html</p>	<p>A Belgian Seller sold fire resistant paint to a Dutch Buyer. The parties did not choose an applicable law until the dispute arose, at which time they agreed on applying Dutch law. One party understood this to include the CISG, the other argued that it did not.</p>	<p>The Court held that a choice of Dutch law during proceedings led to applicability of CISG.</p>
<p>Nidera SA v. General Oil Trading BV, District Court Rotterdam</p>	<p>2 March 2011 307736 / HA ZA 08-1306</p>	<p>A Dutch Seller sold soy bean oil to Argentinian Buyer.</p>	<p>The Court rejected an argument that the inclusion of a ‘cash against documents’ term implied a choice of English law.</p>

POLAND			
LM v Grazyna S Supreme Court (<i>Fabric case</i>)	17 October 2008 I CSK 105/08 http://cisgw3.law.pace.edu/cases/081017p1.html	Italian Seller sold fabric to a Polish Buyer. The Buyer alleged that the goods were not of the quality required by the contract and paid only ¼ of the price. The Court mentioned that CISG applied by virtue of Art. 1(1)(a). It was considered that as the parties were arguing by reference to Polish law that they were excluding the CISG.	The Court stated that circumstances such as: filing a suit before a Polish court, invoking Polish law in the pleadings, and not contesting the other party's reliance on a given law, are not a sufficient proof of a tacit choice of Polish law. Circumstances of such kind do not indicate an intention to submit the contract to a particular governing law. They rather constitute an expression of the parties' legal representatives, who, however, had no authority to choose the applicable law on behalf of the parties. The Court then stated that even if the choice was of Polish law this would not automatically result in exclusion of CISG under Art. 6.
RUSSIA			
Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry	24 January 2000 Award 54/1999 http://cisgw3.law.pace.edu/cases/000124r1.html	A Russian Seller sold certain goods to an American Buyer under a contract stating that the Civil Code of Russia would apply.	The Court found: '[t]he parties' agreement on applicability of the law of a particular state to their contract of international sale of goods does not exclude the regulation of their relations by the UN Vienna Convention 1980 as the principal places of their activity are situated in different Contracting States, and inapplicability of the Convention has not been expressly agreed to. National law chosen by the parties is to be applied as a subsidiary statute.'
Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry	12 November 2004 174/2003	Buyer and Seller entered into a contract which provided an arbitration and choice of law clause in favour of Russian law in the instance that a claim be brought at ICAC at the Chamber of Commerce and Industry of the Russian Federation; or alternatively, if a claim be brought at ICAC in Vienna, the law will be in compliance with the UNCITRAL Rules. The claimant brought the dispute to ICAC Russia.	Russian law was applicable only as the subsidiary law, and CISG was the main law of the contract, because both parties were from member states. Art. 71 CISG still applied to the extent not varied by Clause 3.2. The Court also held that UNIDROIT Principles not applicable due to lack of express agreement. Agreement on applicability of Russian law must be subsidiary to applicability of CISG via Art. 1(1).

SERBIA			
High Commercial Court	9 July 2004 Pž. 1006/2004/1 http://cisgw3.law.pace.edu/cases/040709sb.html	Claimant (from Slovenia) and Respondent (from Serbia) on appeal disputed the applicable law to a contract.	The parties had not expressly selected the applicable law, however it was concluded from the contract and the facts of the case that the law of Serbia applied. The Court applied the rules of private international law to determine the applicable law, i.e., what language was the contract in, which laws were invoked by the parties in their contract, etc. Additionally the parties argued on the basis of the law of the State Union of Serbia and Montenegro at first instance, which was applied.
Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce	6 May 2010 T -5/09 http://cisgw3.law.pace.edu/cases/100506sb.html	The Serbian Seller sold agricultural products to the Bosnian Buyer, under a contract containing an arbitration and choice of law clause in favour of Serbia.	Tribunal held that choice of the law of Serbia, a Contracting State, made the CISG applicable.
Foreign Trade Court attached to the Serbian Chamber of Commerce	27 December 2010 T-17/09 http://cisgw3.law.pace.edu/cases/101227sb.html	Serbian Seller sold ice-cream to a Montenegrin Buyer, under a contract governed by the law of Serbia.	During the oral hearing the parties reached agreement to explicitly exclude the application of the CISG.
SLOVENIA			
Vrhovno sodišče v Celju [Celje High Court]	8 June 2011 VSC sklep Cpg 33/2011 http://cisgw3.law.pace.edu/cases/110608sv.html	The Polish Seller sold paper bags to a Slovenian Buyer. The contractual choice of law was for 'civil code and corresponding community regulations.'	The CISG had been applied by virtue of Art. 1(1)(a) at first instance, however the court had failed to consider whether parties had excluded the CISG pursuant to Art. 6. On appeal, the High Court found that the contractual choice of law excluded the CISG, and then remanded the matter back to the first instance court.
SLOVAK REPUBLIC			
Supreme Court	28 February 2001 NS SR - 2 Cdo/114/2000 http://cisgw3.law.pace.edu/cases/010228k1.html	The Swiss Seller sold machinery to a Slovak Buyer, and the Seller subsequently attempted to avoid the contract.	The Court reversed the decision of the lower courts that non-uniform domestic Slovak law was applicable, and found that the CISG was applicable by virtue of Art. 1(1).

Regional Court, Bratislava	10 October 2007 http://cisgw3.law.pace.edu/cases/071010k1.html	The contract concerned a sale between Austrian and Slovakian companies.	The Appellate Court found that the parties to the proceedings have impliedly chosen the non-uniform domestic Slovak law since they referred to it in first instance and neither of the parties objected in the course of the proceedings to its application. Therefore, despite the fact that the CISG would otherwise be applicable under Art. 1(1), it was found to be not applicable due to the implied waiver by the parties during litigation.
Regional Court, Nitra	15 October 2008 KS NR - 15Cob/140/20 08	The contract concerned the sale of potatoes from a Slovak Seller to the Czech Buyer.	The Regional Court held that first instance court wrongly judged factual circumstances under provisions of the Slovak Commercial Code when it ought to have applied CISG provisions.
SPAIN			
BSC Footwear Supplies Ltd v. Brumby St., Audiencia Provincial de Alicante	16 November 2000 http://cisgw3.law.pace.edu/cases/001116s4.html	The Spanish Seller had a contract for the sale of shoes with an English Buyer. The contract had a clause that stated “the contract will be interpreted by the laws of England”. At first instance, the Seller argued under Spanish non-uniform domestic sales law, and Buyer argued under CISG and the Court applied Spanish domestic sales law and found for the Seller.	On appeal the Court held that the CISG was tacitly excluded because the parties failed to raise it in pleadings until appeal; the contract contained a clause stating it will be interpreted by English law, which equates to excluding the CISG.
Compañía Mercantil NER- TOR v. Autolux F. Strub, Tribunal Supremo, Sala de lo Civil (sección 1ª) (<i>Automobile accessories case</i>)	24 February 2006 165/2006 http://cisgw3.law.pace.edu/cases/060224s4.html	A Seller from Switzerland sold automobile accessories to a Buyer from Spain. The Seller was late in the delivery and the goods did not conform or function properly.	In the second appeal from the original hearing, the Seller relied on the CISG, but the Court noted that the Seller had previously only relied upon non-CISG domestic Spanish law. Consequently, the Court found the Seller had tacitly consented to non-uniform Spanish law and deemed the CISG inapplicable.
SWITZERLAND			
Bezirksgericht [Lower District Court] (BG) Weinfelden	23 November 1998 http://cisgw3.law.pace.edu/cases/981123s1.html	The Swiss Buyer purchased a milking machinery from the German Seller, under a contract which stated that it was governed by German law.	The Court held that, although the CISG is part of German law, when choosing German law, the parties had in mind not the CISG but the German Civil Code. The court therefore applied the rules of the German Civil Code and held that via Art. 6, the CISG was not applicable.

Canton Appellate Court, Vaud	8 December 2000 CLOUT Abstract No 1403 476/2000/FJO[CA99.000892] http://cisgw3.law.pace.edu/cases/001208s1.html	A Swiss Seller and German Buyer entered a contract for a coffin. The contract specified a choice of Swiss law.	The Court held that the initial assumption was that the choice of a Contracting State law extended to the CISG. As it could not discern any contrary intent, the CISG was applicable.
Kantonsgericht [District Court] (KG) Zug	11 December 2003 A2 02 93	A German company sold plastic granulate to a Swiss company under a contract that was silent on the applicable law.	As the parties did not agree upon the applicable law and the contract in dispute is for the sale of goods, and both Switzerland and Germany are CISG Contracting States, the Court decided that substantive issues would be resolved according to the CISG.
Tribunal cantonal [Appellate Court] Vaud	24 November 2004 CLOUT Abstract No 1401 224/2004/PBH http://cisgw3.law.pace.edu/cases/041124s1.html	A Turkish Seller and Spanish Buyer entered into a contract for cement. The Buyer alleged failure of delivery in quantities stipulated and claimed damages and contractual penalty.	The Court considered a choice of law in favour of the national law of a Contracting State was not tacit exclusion, but as parties had chosen Swiss law in the absence of any contractual or other association with Switzerland whatsoever, it had to be inferred that they intended their contract to be governed by the Swiss Code of Obligations rather than the CISG.
Obergericht [Appellate Court] Aargau	3 March 2009 ZOR.2008.16 / eb http://globaleslaw.com/content/api/cisg/urteile/2013.pdf	The Contract involved the sale of a prefabricated house between a Swiss Buyer and an Austrian Seller.	The applicability of the CISG was unresolved. The Court could not conclude which law was applicable: Swiss law without CISG, CISG, or Austrian law without CISG. Court noted that the party was entitled to damages regardless of the law applicable.
Bundesgericht, I. zivilrechtliche Abteilung	16 December 2009 4A 240/2009 CISG online no 2047 http://www.globalesaleslaw.org/content/api/cisg/urteile/2047.pdf	A South African Seller and an American Buyer entered the contract sale of chemical products.	Parties agreed to have their contract governed by non-uniform Swiss domestic law. However, the Court referred to Art. 25 CISG to define 'material breach'.

Handelsgericht [Commercial Court] (HG) Aargau	10 March 2010 CISG-online No 2176 http://cisgw3.law.pace.edu/cases/100310s1.html	A Swiss Seller sold converter to German Buyer.	The Court held that a choice of forum clause selecting a court in a CISG Contracting State would not suffice for exclusion of the CISG under Art. 6, because such a court must apply the CISG as part of its own law. Further, both parties referred to the CISG in their briefs, and accordingly the Court held that there was no discernible intent to exclude.
Cour de Justice [Appellate Court] de Genève	12 March 2010 CISG online no 2426 http://cisgw3.law.pace.edu/cases/100312s1.html	A Saudi Arabian Seller and a Belgium Buyer entered a contract for the sale of diamants.	The Court found that through Art. 6 CISG parties can tacitly exclude the CISG and may do so even in the course of the legal proceedings. It noted that the parties referred to non-uniform substantive Belgian law in their pleadings, but concluded that this was not tacit exclusion of the CISG inasmuch as the areas of law involved were not among those covered by the CISG.
Handelsgericht des Kantons, [Cantonal Commercial Court] (HG) St. Gallen	15 June 2010 HG.2009.164 CISG-Online Case No 2159 http://www.globalesaleslaw.org/content/api/cisg/urteile/2159.pdf	The matter involved a contract between a Swiss Seller and a Spanish Buyer.	The CISG was excluded by the parties but the CISG was used to interpret the exclusion clause.
Cour de justice [Appellate Court] de Genève	22 October 2010 ACJC/1261/20 10 CISG-Online Case No 2430 http://globalsaleslaw.com/content/api/cisg/urteile/2430.pdf http://cisgw3.law.pace.edu/cases/101022s1.html	The contract involved the sale of communications and GPS equipment.	The Court found partial derogation from Art. 58 CISG under Art. 6 regarding payment had been validly effected by means of settlement on the price. This also accorded with mandatory French law (Civil Code Arts 1792-4 & 1728). The CISG was otherwise applicable.

UNITED STATES OF AMERICA

<p>Frummer v. Hilton Hotels International, Inc., Supreme Court, New York</p>	<p>18 August 1969</p> <p>360 Misc. 2d 840, 04 N.Y.S.2d 335</p>	<p>Negligence case wherein American Plaintiff slipped and fell at the Defendant's hotel in UK. At trial American law was applied.</p>	<p>Found that a court should order a new trial if it discovers <i>sua sponte</i> that a foreign law should have been used at trial but was not, if the use of that law would have affected the outcome of the case. Court found that they can take judicial notice of foreign law, but are not obliged to raise it <i>sua sponte</i>, unlike domestic law. Thus English law was applied.</p>
<p>Orbisphere Corp. v. United States, Federal Court of International Trade</p>	<p>24 October 1989</p> <p>726 F. Supp. 1344,</p> <p>89-02-00404</p> <p>http://cisgw3.law.pace.edu/cases/891024u1.html</p>	<p>Buyer and seller were both from the USA, in a contract for the sale of scientific oxygen analysis devices. One of the American companies did have an office in Switzerland. The contract was concluded prior to 1 January 1989.</p>	<p>Held that although one company did have an office in Switzerland, as a matter of fact, this was a contract between two American companies. Additionally, as it was concluded prior to the date of the CISG and by two domestic nations, this was a matter of domestic law to which the CISG was not applicable.</p>
<p>ICC Arbitration Award 7565 of 1994</p>	<p>1994</p> <p>7565 of 1994</p> <p>http://www.unilex.info/case.cfm?id=141</p>	<p>A US Buyer purchased coke from a Dutch Seller. An issue regarding conformity arose.</p>	<p>The tribunal held that the parties had expressly made the contract subject to "the laws of Switzerland", which according to the tribunal included the CISG as of the date of its incorporation into Swiss law. As such, the contract was held to be governed by the CISG pursuant to Art. 1(1)(b) CISG.</p>
<p>GPL Treatment v. Louisiana-Pacific Corp., Oregon Court of Appeals</p> <p>Affirmed 914 P. 2d 682 (Or, 1996), Oregon Court of Appeals</p>	<p>12 April 1995</p> <p>894 P. 2d 470</p> <p>9209-06143 CA A81171</p> <p>http://cisgw3.law.pace.edu/cases/950412u1.html</p>	<p>The Plaintiff believed it had entered into a contract with the Defendant via telephone to sell some 88 truckloads of C-grade wood. The Defendant denies having made any agreement. The Plaintiff asserted numerous oral and written modifications were made to the contract over time. Some 13 truckloads were delivered before Plaintiff sued Defendant for loss of profits. At first instance, both counsel failed to argue CISG.</p>	<p>Counsel's failure to argue the CISG was held to amount to a waiver, which permitted the Court to apply the pleaded inapplicable domestic law. The Court refused to hear CISG arguments. Counsel was not allowed to alter the pleadings and was held to have waived the CISG argument since it was not raised until late in the trial. The case was decided on the basis of the UCC. The writing requirement of the UCC would have been displaced by the CISG.</p>

<p>Delchi Carrier, S.p.A. v. Rotorex Corp, U.S. Circuit Court of Appeals (2d. Cir.) [federal appellate court]</p>	<p>6 December 1995 Nos. 185, 717, Dockets 95-7182, 95-7186 http://cisgw3.law.pace.edu/cases/940909u1.html http://cisgw3.law.pace.edu/cases/951206u1.html</p>	<p>An Italian Buyer purchased compressors for air conditioners from an American Seller.</p>	<p>The Court held that the CISG applied as the chosen domestic law included the CISG. The Court did, when interpreting the CISG, use the UCC, nevertheless noting the UCC did not apply. In regard to the exclusion of the CISG, the Court noted that had the parties selected the UCC or California Commercial Code, this might have supported a finding of implied exclusion.</p>
<p>Asante Technologies, Inc. v. PMC-Sierra, Inc., U.S. District Court of California, San Jose Division [federal court of 1st instance]</p>	<p>27 July 2001 164 F. Supp. 2d 1142 C 01-20230 JW http://cisgw3.law.pace.edu/cases/010727u1.html</p>	<p>The Canadian Seller sold electronic components to US Buyer. Each had different copies of the contract. The Buyer's clause stated that the contract was governed by the law of California, while the Seller's clause stated that British Columbia was the "proper" law governing the agreement. The goods were defective and a dispute arose.</p>	<p>The Buyer brought an action in California without referencing the CISG, and the Seller moved the action this Court due to its federal jurisdiction arguing that applicability of CISG would need to be determined as federal jurisdictional question. It was held that the CISG applied because parties were from different Contracting States thus the CISG applied via Art. 1(1), absent clear language to the contrary.</p>
<p>St Paul Guardian Insurance Company and Travelers Insurance Company v. Neuromed Medical Systems & Support GmbH, U.S. District Court, Southern District of New York</p>	<p>26 March 2002 2002 U.S. Dist. LEXIS 5096 (S.D. N.Y.) 00 Civ. 934 (SHS) http://www.cisg.law.pace.edu/cases/020326u1.html</p>	<p>A German company sold a magnetic resonance imaging system to American company, under a contract governed by German law. A dispute arose as to allocation of risk in shipping of goods.</p>	<p>The Court held: '[w]here parties ... designate a choice of law clause in their contract -- selecting the law of a Contracting State without expressly excluding application of the CISG [this results in application of the CISG] as the law of the designated Contracting state'.</p>

<p>Ajax Tool Works, Inc. v. Can-Eng Manufacturing Ltd., U.S. District Court, Northern District Illinois (Eastern Division)</p>	<p>29 January 2003 2003 U.S. Dist. LEXIS 1306 (N.D. Ill.) 01 C 5938 http://cisgw3.law.pace.edu/cases/030129u1.html</p>	<p>The Canadian Seller sold fluidized bed furnace to a US Buyer under a contract governed by the law of Ontario. The Buyer sued for breach of warranty and contract as a result of 4 years of difficulties encountered with furnace.</p>	<p>The Court found that the parties' contract was governed by the CISG because the parties had their places of business in two different Contracting States pursuant to Art. 1(1)(a). The Court found that the parties had not agreed to exclude application of the CISG under to Art. 6. Although the Buyer's pleadings made claims pursuant to the non-uniform domestic sales law of Ontario rather than the CISG, the Court concluded that the pleadings gave legally sufficient notice of claims now framed under the CISG.</p>
<p>Chateau des Charmes Wines Ltd v. Sabaté USA, U.S. Circuit Court of Appeals (9th Circuit) [federal appellate court]</p>	<p>05 May 2003 02-15727 http://cisgw3.law.pace.edu/cases/030505u1.html</p>	<p>An American Seller sold wine corks to the Canadian Buyer. Upon payment, an invoice was issued containing a new choice of forum clause.</p>	<p>The CISG was applicable pursuant to Art. 1(1). Accordingly, it was determined the forum clause was not part of contract in accordance with the CISG.</p>
<p>BP International, Ltd. v. Empresa Estatal Petroleos de Ecuador, U.S. Court of Appeals (5th Cir.)</p>	<p>11 June 2003 332 F.3d 333 02-20166</p>	<p>A US Seller sold gasoline to an Ecuadorian Buyer under a contract governed by Ecuadorian law, which set a limit to the gum content of the gasoline. This limit was exceeded upon arrival of goods to Buyer, although not at the time the gasoline began transit.</p>	<p>The CISG applied. In regards its exclusion, the Court noted '[w]here parties seek to apply a signatory's domestic law in lieu of the CISG, they must affirmatively opt-out of the CISG'.</p>
<p>Valero Marketing & Supply Co. v. Greeni Oy, Federal District Court, New Jersey</p>	<p>15 June 2005 373 F.Supp.2d 475 CIV.01-5254(DRD) http://cisgw3.law.pace.edu/cases/050615u1.html</p>	<p>A Finnish Defendant sold naphtha to the US Plaintiff. Neither of the confirmations from each side, each containing choice of law clauses was effective.</p>	<p>The CISG applied pursuant to Art. 1(1)(a). Under UCC formation provisions, the choices of law were ineffective. The UCC formation provisions were applied because Finland had not adopted Part II CISG.</p>

<p>American Mint LLC v. GOSoftware, Inc., U.S. District Court, Pennsylvania</p>	<p>6 January 2006 2006 U.S. Dist. LEXIS 1569 (M.D. Pa) Civ.A. 1:05-CV-650 http://cisgw3.law.pace.edu/cases/050816u1.html</p>	<p>American company sold software to another American company (which was a wholly owned subsidiary of a German firm) a under contract governed by the law of the state of Georgia, USA. The software was not compatible with German numerical configurations. The German-owned US Buyer argued that federal jurisdiction could be exercised because of application of CISG, while the American Seller argued that because of application of state laws of Georgia, federal jurisdiction could not be exercised and only Georgian state law was applicable, therefore the CISG was inapplicable and Court would not have jurisdiction.</p>	<p>The choice of law in favour of Georgian law did not preclude the CISG, despite CISG operating as federal and not state law. The court stated that ‘parties seeking to apply a [Contracting State's] domestic law in lieu of the CISG must affirmatively opt out of the CISG’ (citing U.S. cases in support). It concluded that the choice-of-law clause in this case ‘fails to expressly exclude the CISG by language which affirmatively states it would not apply.’ However, as both parties to this contract were American, CISG was not applicable.</p>
<p>American Biophysics v. Dubois Marine Specialties, Federal District Court, Rhode Island</p>	<p>30 January 2006 411 F.Supp.2d 61 C.A. 05-321-T http://cisgw3.law.pace.edu/cases/060130u1.html</p>	<p>An American Plaintiff sold mosquito magnets to the Canadian Defendant, under a contract stating to be governed by the law of Rhode Island. The Buyer failed to execute payment.</p>	<p>The Court upheld the exclusion of the CISG by choice of law of the state of Rhode Island, stating that a choice of a law other than the CISG within a contract is indicative of the CISG’s non-applicability.</p>
<p>Beltappo Inc. v. Rich Xiberta, SA, U.S. District Court, Western District, Washington [federal court of 1st instance]</p>	<p>7 February 2006 C05-1343Z 2006 WL 314338 (W.D.Wash.) http://cisgw3.law.pace.edu/cases/060207u2.html</p>	<p>A Spanish Seller sold corks for wine bottles to an American Buyer, under a contract governed by the law of the state of Washington. The Seller admitted in evidence that they understood the CISG to be applicable.</p>	<p>The Court held that the CISG applied. A choice of New Jersey/New York law would not exclude CISG.</p>

<p>Travelers Property Casualty Company of America v. Saint-Gobain Technical Fabrics Canada Ltd, U.S. District Court, Minnesota</p>	<p>31 January 2007 2007 WL 313591 Civ. 04-4386 ADM/AJB http://cisgw3.law.pace.edu/cases/070131u1.html</p>	<p>A US Buyer purchased mesh used for walls from a Canadian Seller, under a contract governed by the law of Minnesota.</p>	<p>As both Buyer and Seller were located in Contracting States, the CISG would apply to the transaction unless excluded by the parties and, ‘absent an express statement that the CISG does not apply, merely referring to a particular state’s law does not opt out of the CISG’.</p>
<p>Easom Automation Systems, Inc. v. Thyssenkrupp Fabco, Corp., U.S. District Court, Eastern District Michigan.</p>	<p>28 September 2007 2007 WL 2875256 06-14553 http://cisgw3.law.pace.edu/cases/070928u1.html</p>	<p>The American company sold a sports bar assembly system to the Canadian company, who failed to pay the purchase price. Only the Buyer’s copy of the contract had a choice of law clause, in favour of Canadian law.</p>	<p>The Court found that parties had not expressly opted out of CISG, which therefore applied under Art. 1(1), and under both Canadian and American law the outcome would thus be the same.</p>

<p>Macromex Srl v. Globex International Inc., American Arbitration Association Award</p> <p>(See related proceedings below)</p>	<p>23 October 2007</p> <p>Case No. 50181T 0036406</p> <p>http://cisgw3.law.pace.edu/cases/071023a5.html</p>	<p>American company sold frozen chicken parts to Romanian company, but the Romanian government subsequently banned chicken import for a period of time as a result of avian flu. Seller was delayed in delivery and Buyer sued for delay.</p>	<p>The tribunal held that CISG was applicable via the express choice of the parties, who argued under both the UCC and the CISG.</p>
<p>Solae, LLC v. Hershey Canada, Inc., U.S. District Court, Delaware [federal court of 1st instance]</p>	<p>9 May 2008</p> <p>557 F.Supp.2d 452 (D. Del. 2008)</p> <p>07-140-JJf</p> <p>http://cisgw3.law.pace.edu/cases/080509u1.html</p>	<p>An American Seller sold soy lecithin to a Canadian Buyer, but it was contaminated such that it could not be used for its intended purpose, making chocolate. The parties disputed which documents constituted the contract, and specifically, whether the Seller's 'conditions of sale' which contained a choice of forum clause formed part of the contract.</p>	<p>It was held that the CISG was applicable and that 'nothing in the [CISG] suggests that the failure to object to a party's unilateral attempt to alter materially the terms of an otherwise valid agreement is an "agreement" within the terms of Article 29'.</p>
<p>Macromex S.r.l. v. Globex International Inc., U.S. Court of Appeal (2nd Cir.)</p> <p>(See related proceedings above)</p>	<p>26 May 2009</p> <p>330 Fed Appx. 241</p> <p>08-2255-cv</p> <p>http://cisgw3.law.pace.edu/cases/090526u1.html</p>	<p>American Seller sold frozen chicken parts to Romanian Buyer, but Romanian government subsequently banned chicken import for a period of time as a result of avian flu. Seller was delayed in delivery and Buyer sued for delay.</p>	<p>Court held that 'failure to object to a unilateral attempt to modify a contract is not an agreement to modify a contract'.</p>
<p>Doolim Corp. v. R Doll, LLC, U.S. District Court, Southern District of New York [federal court of 1st instance]</p>	<p>29 May 2009</p> <p>No. 08 Civ. 1587 (BSJ)(HBP)</p> <p>http://cisgw3.law.pace.edu/cases/090529u1.html</p>	<p>An American Buyer entered into a contract with a South Korean Seller for the purchase of garments. The Seller was to manufacture and to deliver garments. The Buyer agreed to pay certain taxes and prices, which the Seller did not pay.</p>	<p>The CISG applies as both parties had their place of business in a Contracting State. The Court noted the principle in <i>Delchi</i> that the 'CISG applies if "agreement is silent as to choice of law" and "both parties are located in signatory nations," unless parties have "by contract choose[n] to be bound by a source of law other than the CISG, such as the Uniform Commercial Code".'</p>

<p>Golden Valley Grape Juice and Wine, LLC v. Centrisys Corp., U.S. District Court, Eastern District of California [federal court of 1st instance]</p>	<p>22 January 2010</p> <p>2010 U.S. Dist. LEXIS 11884 (E.D. Cal.)</p> <p>CV F 09-1424 LJO GSA</p> <p>http://cisgw3.law.pace.edu/cases/100121u1.html</p>	<p>Buyer purchased a centrifuge from the Defendant for use in their grape juice applications. An Australian manufacturer had manufactured and sold the centrifuge to Defendant. After installation it did not perform to specifications. Buyer notified Defendant of the non-conformity, Defendant said they would fix it. The Buyer eventually filed against Defendant, who sought to join the manufacturer.</p> <p>The contract between the Seller and manufacturer had a jurisdiction clause in favour of Victoria, Australia, and Seller disputed the validity of this clause, as it was not annexed to contract.</p>	<p>The CISG applied to formation, and under Art. 18(3) the terms did not need to be signed or annexed, thus the forum selection clause formed part of the contract for manufacture. There was no undue burden on the Seller if the clause were to be enforced. The Court ruled that the dispute must be refilled in Victoria, Australia.</p>
<p>Hanwha Corporation v. Cedar Petrochemicals, Inc., U.S. District Court, Southern District of New York [federal court of 1st instance]</p>	<p>18 January 2011</p> <p>09 Civ. 10559 (AKH)</p> <p>http://cisgw3.law.pace.edu/cases/110118u1.html</p>	<p>A Korean Buyer bought toluene (a petrochemical) from a US Seller. The Buyer was suing the Seller for breach of contract. The contract had a clause selecting New York law, the UCC and INCOTERMS 2000. The Buyer had not responded, but engaged in conduct indicating consent. Later the Buyer sent back an amended contract selecting Singapore law and INCOTERMS 2000. The Seller did not respond to the Buyer's terms.</p>	<p>The Court found that neither party selected a 'substantive law to displace the CISG, and their competing choices must fall away, leaving the CISG to fill the void by its own self-executing force.'</p>

<p>Ho Myung Moolsan, Co. Ltd. v. Manitou Mineral Water, Inc., U.S. District Court, Southern District of New York [federal court of 1st instance]</p>	<p>2 December 2010 07 Civ. 07483 (RJH) http://cisgw3.law.pace.edu/cases/101202u1.html</p>	<p>A South Korean Buyer of mineral water brought a claim for breach of contract against the US Seller. The Buyer relied on the New York UCC in its claim, and in interlocutory proceedings. After discovery, and prior to trial, the Buyer asserted that the CISG was applicable.</p>	<p>The Court agreed that the CISG was applicable, but found that because the Buyer had ‘explicitly’ stated in pleadings that the action was brought <i>under state law</i> and did not allege the CISG was applicable until after discovery and before trial, that parties had ‘consented’ to application of the New York UCC which was the State Law. The Court also considered that to allow argument on the CISG would prejudice the Seller, but would not have made any difference to the outcome, since the only ‘substantive difference’ was the notice requirement.</p>
<p>It's Intoxicating, Inc. v. Maritim Hotelgesellschaft mbH, Federal District Court [Pennsylvania] United States</p>	<p>31 July 2013 11-CV-2379 2013 WL 3973975 http://cisgw3.law.pace.edu/cases/130731u1.html</p>	<p>The case involved parties from the USA and Germany, and thus the CISG applied pursuant to Art. 1(1)(a).</p>	<p>Despite both parties asserting that the choice of the "laws of the state of Pennsylvania" led to exclusion, the Court upheld the CISG's application, stating that this did not amount to a rejection of the CISG.</p>
<p>Rienzi & Sons, Inc., v. N. Puglisi, Federal District Court, Eastern District of New York [federal court of 1st instance]</p>	<p>27 March 2014 08-CV-2540 (DLI)(JMA) http://cisgw3.law.pace.edu/cases/140327u1.html</p>	<p>An Italian pasta Seller obtained Summary Judgment against a US Buyer in a case involving pasta spoilage where the issue of applicable law was important since it determined whether parol evidence rule would apply. The US Buyer filed a motion to have the summary decision reconsidered on the basis that CISG was applicable.</p>	<p>In its Summary Judgment, the Court relied upon the Ho Myung decision (above) to reject application of CISG, because ‘the parties had relied on New York law ... [in] pleadings ... [and] during the pre-trial conference. [Also, where] counsel referred to anything other than New York law, he referred to Italian law, not the CISG. Thus the finding in Ho Myung as to ‘State Law’ meaning the UCC of New York was relevant, even in the absence of such words [as was the case here]. ‘New York law, not the CISG’ governed the dispute, and the motion was rejected, as the issue had already been considered, and there were no new or controlling decisions or changes in the law. The Court commented that ‘There is little case law interpreting the CISG, and the Court is not aware of any controlling case considering application of the CISG that addresses post-contract actions, particularly, the parties' actions during the course of litigation’. Further, allowing application of the CISG would prejudice the Defendants.</p>

UKRAINE

International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade	23 January 2012 218y/2011, CLOUT Abstract No 1405, http://cisgw3.law.pace.edu/cases/120123u5.html	A Swiss Buyer of corn claimed breach of contract against a Ukrainian Seller. The contract specified Ukrainian law was to apply. The CISG was not excluded. The contract also stated that GAFTA No 200 was to be incorporated 'unless in contradiction of the provisions of the underlying contract'. GAFTA No. 200 Art. 22 excludes the CISG.	The tribunal applied the CISG, despite incorporation of GAFTA No 200 on the basis that the intention to exclude must be express and clear, and given that the main contract only incorporated GAFTA No 200 to the extent it did not contradict the main contract, the selection of Ukraine law without exclusion of the CISG prevailed, leading to the application of the CISG. It was further noted that no contractual provisions limited this selection to Ukraine's non-uniform domestic contract law, and while pursuant to Art. 6 CISG, 'the parties may exclude the application of the Convention', if they wished to do so then 'their intention must be express and clear'.
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