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Case 98: CISG 1(1)(b); 38-40

Netherlands: Rechtbank Roermond; 900336

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Fallini Stefano & Co. S.N.C. (Italy) v. Fordic B.V. (Netherlands)

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(Abstract prepared by M. Sumampouw, Asser Institute)

The plaintiff, an Italian seller, sued demanding payment of the price of cheese sold and delivered to the defendant, a Dutch buyer. The defendant counterclaimed damages and reduction of the price on the ground of non-conformity of the goods with contract specifications.

Applying Dutch private international law, the court found that CISG was applicable as the law of Italy, i.e. the country where the seller had its place of business at the time of the conclusion of the contract (art. 1(1)(b) CISG). The court held that the reasonableness or the time of giving notice depended on the nature of the goods involved. In this case, the court found that the buyer had notified the seller of the non-conformity of the cheese shortly after delivery, which in the view of the court was a reasonable time in view of the fact that cheese is a perishable item (articles 38 and 39 CISG).

The court further found: that the buyer did not notify the seller about the nature of the defect, i.e. that the cheese was infested; and that the fact that the cheese was frozen and not described in the contract was not sufficient reason for not examining it. It was held that, in order for the seller not to be able to rely on articles 38 and 39 CISG, the buyer had to prove its allegation that the seller knew or could not have been unaware that the cheese was infested already at the time it was frozen (art. 40 CISG). The court observed that, if the buyer were able to meet that burden of proof, it would be entitled to a reduction of the purchase price pursuant to article 50 CISG.