

CISG CASES

[Hannaford \(trading as Torrens Valley Orchards\) v Australian Farmlink Pty Ltd \[2008\] FCA 1591](#)

Editorial by Lisa Spagnolo

(extracted from [The Last Outpost: Automatic CISG Opt Outs, Misapplications And The Costs Of Ignoring The Vienna Sales Convention For Australian Lawyers](#))

A recent case to mention the *CISG* was another judgment of Finn J. An Australian grower, TVO, sold cherries through Farmlink, an Australian exporter of fruit, to buyers in Hong Kong and Singapore. The latter buyers were not party to the proceedings. Due to defects, Farmlink claimed to be entitled to pass on price reductions made by the overseas buyers to TVO.

Finn J determined that the relationship between TVO and Farmlink was one of sale, not of agency. This meant that the *CISG* did not apply to the dispute before the Court. Had the opposite conclusion been reached, then the contracts of sale would have been between TVO and the overseas buyers. The *CISG* would have applied to the Singapore contracts, as Singapore is a *CISG* Contracting State under art 1(1)(a). However, the Hong Kong contracts might not have been governed by the *CISG*. Certainly, the *CISG* would not be applicable through art 1(1)(a); as Finn J observed, China has not yet taken the necessary steps to make Hong Kong a Contracting State. Notably, in reaching this conclusion, Finn J referred to relevant *CISG* sources, including scholarship and a French case.

Given the hypothetical nature of the question, the Court understandably did not explore the (unlikely) possibility the *CISG* might apply through art 1(1)(b).

Although the *CISG* was not directly applicable, Finn J made a number of references to its provisions, and in particular, the need for buyers to notify lack of conformity in a timely fashion pursuant to art 39, the right to unilaterally effect a price reduction pursuant to art 50, and art 9 on the influence of usages on contractual terms.

Not only this, but his Honour also cited relevant *CISG* authority in doing so.

The *CISG* is treated in *Hannaford* as an autonomous body of law, and interpretation of it was conducted by reference to international *CISG* decisions and scholarship. Finn J makes it clear that, although the *CISG* did not apply in the dispute before the Court, if it had, different questions would have arisen, and a very different result might have ensued. Certainly the decision demonstrated proper interpretation of the *CISG*, guided by *CISG* sources alone. Although the case properly required application of local sales law rather than the *CISG*, the *CISG*, *UNIDROIT Principles* and comparative law were still used to illuminate global trends in relation to issues pertinent under local sales law.

Finally, Australia has produced a case in which the *CISG* is treated autonomously and in an internationalist spirit, albeit it a case in which the *CISG* was inapplicable. Nonetheless, *Hannaford* stands as a lonely but bright beacon for future Australian courts applying the *CISG*.