International Sales of Goods in Cuba Under the CISG Convention

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Preface

The Republic of Cuba entered into the Convention on the International Sale of Goods (Vienna Convention) on 2 November 1994, and the Convention entered into force on 1 December 1995.

Leonie Fahjen/Pexels.com

On 2 November 1994, the Republic of Cuba entered into the Convention on the Limitation Period in the International Sale of Goods enacted in New York on 14 June 1974.

In view of the ongoing process of opening trade between Cuba and the United States, many questions come to mind about the practical operation and availability of the norms of these conventions in the still elusive scenario of Cuban commercial law within the Cuban judicial system.

Commercial contracts in Cuba are the subject of special legislation, the *Decreto Ley* n. 304, enacted 1 November 2012 (*De La Contratacion Economica*; hereafter, DL 304) and Decreto 310, enacted 17 December 2012 (*De Los Tipos De Contratos*). This legislation modified the previous special legislation found in the Civil Code and in the *Decreto Ley* n. 15 (*Normas Basicas Para Los Contratos Economicos*).

A recent essay by Lourdes Dávalos León addresses several questions that arise from these statutes.[1] DL 304 explicitly does not apply to international contracts unless by specific agreement of the parties. León investigates the differences between economic and commercial contracts, as well as between domestic and international contracts under the revised legislation of *planificacion economica*, and concludes that business practice and jurisprudence (that is, judicial precedents) will open the way to the interpretation of this legal system.

While this is true, the trouble is that business operators may find little guidance from jurisprudence the way we know and use it. Until about a year ago, some Cuban decisions could be found online on the websites of the *Tribunal Supremo* and the *Camara Arbitral*, but presently, although the links still exist, no data is available.

It is possible to find decisions on specific legal issues through professional contacts, and in fact, this article was made possible by scouting private sources who happened to have examples of actual decisions. Some rare writings by professors and attorneys who have had cases in Cuba may also be found online, but as one of these writers alerts, the availability of judicial material remains scarce.[2]

The *Tribunal Supremo Popular* (TSP) is the highest court in Cuba, with the power to adjudicate, among other matters, claims for breach, modification, nullity, invalidity or extinction of economic contracts.

The TSP is organized into specialized chambers (*camaras*). The chamber that hears cases regarding the sale of goods is the *Camara De Lo Economico*.[3] Many studies and essays have been written about the independence, and thus the reliability, of the Cuban

judiciary.[4] These studies highlight that the judiciary is still under strict control of the Ministry of Justice, with the judges being evaluated constantly and subject to removal at will. It might be suspected, therefore, that a foreign plaintiff would be at a disadvantage against a local company with the home field advantage, under the assumption that the judge would be naturally biased.

Suspicions also abound about the fairness of the Cuban legal system, in terms of the application of laws and legal reasoning, that stems from Latin ancestry and thus is somewhat arcane to most American practitioners.

The readings from the extremely limited number of cases retrieved for this article, however, tend to show the contrary, and the same applies also to another dispute-resolution institution, the *Corte de Arbitraje de Comercio Exterior*, renamed in 2007 to *Corte Cubana de Arbitraje Comercial Internacional* (hereafter, *Corte*).

The *Corte* is competent to adjudicate contractual and non-contractual disputes of international character,[5] arising in the field of business, which are voluntarily submitted by the parties. The structure and operational mode are almost identical to any arbitration society of the world, including model clauses and mediation procedures.[6]

A very interesting rule of the *Corte* is the law that the panel should apply. The will of the parties comes first, followed by the default choice if the parties have not made a choice, which is the law that the panel finds applicable using the principles of private international law (choice of law) or the customs of international trade. For disputes that involve an *empresa mixta* or an enterprise of totally foreign capital, Cuban law applies.

Here comes one of many questions: What is Cuban law? Is it the Civil Code, the Code of Commerce or could it ever be the CISG Convention?

An article by Abogada Lourdes Avalo Leon[7] raised questions about the stance that the Cuban judiciary might take after the new regulations of the *Contratacion Economica* took effect in 2012, but few cases could be found even before 2012 that supply reassuring answers.

ETECSA v. Republic Bank[8]
Tribunal Supremo Popular (*Sala de lo Economico*)
16 June 2008

A South African telecommunications enterprise entered a contract for the international sale of goods with a Cuban telecommunication company (ETECSA). The seller assigned the credit for payment of the purchase price to Republic Bank, a domestic banking institution established under the laws of Cuba. The buyer did not pay, alleging that the goods did not conform to specifications, thus pleading fundamental breach.

The court[9] found for the bank and required the buyer to pay, on the grounds that ETECSA could withhold payment only for the part of the goods that were nonconforming, on the equitable principle of balance of the performances as found in Article 7 of the CISG and in the Civil Laws of Cuba.

The court also found that the assignee had all of the defenses that the assigned party had against the assignor, and therefore the principle of compensation applied to the demand of the bank.

The buyer appealed to the *Tribunal Supremo* (TSP), which reversed.

The TSP began with a choice of law analysis. The underlying contract being with a corporation of South Africa (also a party to the Convention), the TSP found that the CISG was applicable. In fact, the contract of sale contained an arbitration clause to the *Corte de Arbitraje de la Camara de Comercio*. The plaintiff, however, did not avail itself of the arbitration clause and sued in the *Court of La Habana*. The defendant appeared without objecting the jurisdiction, and hence the TSP found that the parties had made an implicit exclusion of the arbitration clause, but not of the applicable law. In any case, the TSP reasoned, the Convention would have applied, as the Convention is part of the Cuban law.

The TSP then considered the merits, finding that under Article 25 of the Convention, there was a fundamental breach (*incumplimento esencial*) that caused the other

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party a prejudice that deprived that party of what it substantially expected to reap under the contract.

The TSP also opined about the application of the general principles of the CISG and the principles of contractual good faith and the conservation of contracts.

Note that this dispute was ultimately between two Cuban entities, one acting under assignment, and it is not known if the bank had protective covenants with the assignor. The bank received no preferential treatment, by precise application not only of relevant provisions of the CISG, but also in consideration of the general principles of the Convention and of good faith, which are of universal application. Most important, in 2009, the TSP already had held that the CISG is part of the Laws of Cuba, and applies automatically whenever the choice of law calls for Cuban law.

Nelson Servizi S.r.l. v. Empresa RC Comercial[10]
Tribunal Supremo Popular, Sala de lo Economico
Decision n. 3 of 30
April 2009

An Italian company sold a plastic molding machine to a Cuban company. The contract was signed in January 2004 and provided for payment by installments. The buyer made payments through December 2006, and then failed to complete payment. The seller sued in March 2007 for the unpaid balance. The courts found the action time was barred based on the statute of limitations of one year provided by Article 116 (d) of the Cuban Civil Code.

The TSP reversed, based upon the CISG Convention and the Limitation Convention. The TSP found that under Article 20 of the Civil Code of Cuba, special laws, like the two mentioned conventions, prevail over those of the national legislation. The parties had not opted out of either convention.

Under Article 12 (2) of the Limitation Convention, the limitation period begins to run from the date when the particular breach occurred, not from the date of the original contract.

Note: the TSP did not allow interest to be added to the award because a certain agreement of the Central Bank of Cuba did not apply to the sale of goods by foreign entities.

C.I. Dental X-Ray S.A.S. v. MEDICUBA
Laudo 25, Corte Cubana de Arbitraje Comercial
23 December 2013
Arbitrators: Dr. Juan Mendoza Diaz, Lic. Valentin F. Lopez Alvarez
M. Sc. Narciso A. Cobo Roura (presiding)

This case involves a *laudo*, or arbitration award, rendered in a controversy between a Colombian seller and a Cuban company, arising out of a contract of international sale. The instrument was drafted using an official form of the *Comercio Exterior y de Inversion Extranjera*, containing clauses about place and terms of delivery, value of the contract, dates and place of delivery and ways and conditions of payment.

Under the latter condition, MEDICUBA, the buyer, opened a Letter of Credit (not confirmed) on 10 April 2008 for 328,760.15 euros, equal to US$518,126.00 at the exchange rate of 1.576 (then prevailing).

The seller loaded the consignment at Cartagena on 10 August 2008, a delay of eighty-eight days from the agreed date of shipping. (A claim for this delay was pursued by the buyer under a separate action.) At that time the rate of exchange had gone down to 1.5083.

While the seller had performed its obligation to deliver the goods, though with a delay, the buyer was in breach as it had withheld payment that should have been made on 10 April 2009. The buyer argued as an excuse for the delay its difficult financial situation, without alleging circumstances of extraordinary character. After many solicitations, the buyer finally gave orders of payment on 10 May 2010, a delay of thirteen months. The buyer applied the rate of exchange on the day of payment, $1.2497 per euro, which yielded US$400,392.34, a shortage of US$117,733.66.

In addition to paying two years after the opening of the Letter of Credit, the buyer did not wire the interest for the 240 days of financing or the penalty for delay of payment.

The seller made a claim of US$117,733.66 for the balance owed, US$49,868.78 for interest and US$47,424.64 for penalties.

The *Corte de Arbitraje* first acknowledged its jurisdiction under the arbitration clause in the contract and found that the parties had stipulated the application of Cuban law.

Such law, the *Corte* explained, is basically the Civil Code, the first Final Disposition of which provides that contractual relations of a commercial character are governed by "special legislation," which has been enshrined within two statutory instruments: the *Decreto Ley* n. 304 (DL 304) of 1 November 2012 and Decree 310 of 17 December 2012 (D 310).

Neither of these instruments contains a rule about variation of rate of exchange. DL 304, at Article 63, has a rule on gap filling, remanding to the commercial customs generally accepted. The CISG is a classic instrument of this type. The *Corte* found that the CISG was applicable because both Colombia and Cuba had ratified the Convention, because the Convention applies unless the parties opt out of it and, interestingly, because the CISG is aimed at harmonizing international commerce.

Coming now to the specific issue in dispute, the *Corte* acknowledged that the Convention has no rules about the variation of rates of exchange; however, it found that articles 57.1, 58.1 and 59 of the CISG affirm the principle of protecting the interests of the creditor who has performed, and of disallowing the party in breach to profit from its breach.

The *Corte* went on to say that, in absence of specific norms, it had to follow usages and customs of international trade, which have been systematically ordered in the UNIDROIT (International Institute for the Unification of Private Law) principles.

Such principles happen to contain a rule about exchange rates, giving the creditor the choice to ask for the rate either at the date the obligation arose or at the date of payment.

Application of this principle is also in harmony with Article 74 of the CISG that protects from damages occasioned by delay in performing.

The demand of the seller was upheld.

MEDICUBA v. C.I. Dental X-Ray S.A.S.

Laudo 4/2014, Corte Cubana de Arbitraje Comercial
Sole Arbitrator: Lic. Valentin F. Lopez Alvarez

The seller and the buyer are the same parties as in the previously reported case, *Laudo* n. 25/2013. The seller was to deliver polymerization devices for mufflers, and the buyers protested that they had received potato fryers instead. The seller admitted the mistake and pledged to remedy it. The substituted goods, however, did not conform or did not work.

The buyer, who had duly paid for the goods, claimed for penalties for nonconforming goods and for delay in arrival. In addition, the buyer inserted into this claim an additional demand for the delayed shipment of the separate consignment, which was the object of the litigation concluded by *Laudo* 25/2013 (see above). Of course, the buyer also claimed for the full value of the nonconforming goods.

The contract called for Cuban law, and the panel held that the CISG is part of Cuban law. Under the CISG, the seller made a fundamental breach by delivering goods not suitable for the required use. Even if the contract did not mention specifications, the seller, having experience and knowledge of the merchandise, could not escape the CISG principle of good faith and reasonable cooperation. The arbitrator called these principles "cardinal principles that inspire the Convention."

Article 36 of the CISG gives the buyer the remedies of specific performance, reduction of price, avoidance and damages. The arbitrator found that the specific performance would have been futile.

The buyer started its action within the Convention's four-year statute of limitations, but the seller argued that buyer did not act as swiftly as provided in the contract. The arbitrator held that the Convention cannot be contracted out on this issue.

The *Corte* found for the buyer.

EMIAT v. C.I. AGRAPISA

Laudo 19/2013, Corte Cubana de Arbitraje Comercial
Arbitrator Appointed by Plaintiff: Dr. Juan Mendoza Diaz
Arbitrator Appointed by Defendant: Lic. Valentin F. Lopez Alvarez
Umpire: M. Sc. Narciso A. Cobo Roura

AGRAPISA, a Spanish trader, sold to EMIAT, a Cuban importer of machinery, an elevator platform manufactured by Matilsa, SA (a Spanish company). Upon delivery in Cuba, the machine was inspected and found working. The machine was transported to its inland destination, stored for a while and then put into operation without problems for a couple of months. Thereafter an accident occurred due to breakage of the welding of a bolt. A worker lost his life in the accident.

EMIAT started arbitration asking for damages caused by a "hidden defect" of the machine, consisting of restitution of the purchase price, freight and insurance, plus costs of arbitration.

The defendant denied the existence of a hidden defect, pointing rather to poor training and improper operation of the machine, and argued that only the manufacturer should be called to respond for a hidden defect, if any. Among many other defenses, AGRAPISA argued that the action sounded as if it was brought in tort while only a contract remedy in warranty should have been available (only requiring substitution of the damaged part). The defendant also objected to the plaintiff's use of Articles 74-77 of the Convention, arguing that these articles apply only in cases of "total breach" of the contract (that is, for total loss of the machine and not just of a small part).

The panel first addressed the issue of the applicable law, finding that the CISG is a law ranking over and above the Civil Code as special law that applies by default, unless explicitly contracted out by the parties. The panel held that a tacit or implied derogation is not enough under Article 6 of the Convention. When the Convention applies by default, the panel held, domestic law can be used as a supplement or a gap-filling of the Convention.

In this connection, the panel found that the Convention has rules about express warranties (Art. 35.1), implied warranties (Art. 35.2), of merchantability (Art. 35.2.a) and of fitness to purpose (Art. 35.2.b) but not about hidden defects, a gap that could be filled using principles of "Roman-French" law like Cuban law. Article 348.2 of the Cuban Civil Code has a rule on hidden defects, granting the remedy of restitution of price and expenses, the same, the panel noted, as under the law of Spain, the law of the defendant.

On the tort/contract cause of action, the panel found that damages caused by contractual breaches still give a cause of action in contract, and that it was irrelevant that the seller was not the manufacturer. Ultimately the panel unanimously found that the machinery was beyond repair and unsuitable to be restored, and granted the plaintiffs all of the damages claimed.

Worthy of note is the fact that the *Laudo* contains a concurring opinion by Dr. Lopez Alvarez. Lopez concurred in the decision but on the grounds that it was not necessary to use the domestic law of Cuba as gap-filling. Article 36 of the Convention, he wrote, is sufficient to produce the consequences otherwise found by the rest of the panel.

Partial Conclusion

After review of the above cases, it is proper to pause for reflection.

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Although in scarce number, to say the least, the cases show remarkable features of methodology, legal logic, academic preparation, open-view approach and consistency in the finding and application of the law.

The structure of the judgments (*Fallos*) and of the arbitral awards (*Laudos*) is consistent, with variations of style. Only one judgment that we found in its original version (*Etecsa v. Republic Banc*[11]) opens with a description of the dispute and is followed by an exposition of the facts. This style mirrors that of many courts of civil law, where each finding is summarized in a separate paragraph preceded by the uppercase words *RESULTANDO* (having found) and *CONSIDERANDO* (considering). The *CONSIDERANDOs* lay out the norms of law that the court deems applicable, and the holding follows in one (sometimes a few) terse paragraphs labeled *FALLAMOS* (we decide).[12]

The *Laudos* (all found in Spanish language) are written along the same general scheme, but are much more exhaustive on the facts. The part of the *Laudo* that contains the final decision is labeled (as in the court judgments) with the word *FALLO*. Extensive reasons of law for the decision are given. In fact, the legal reasons are contained in a dedicated section called *Fundamentos de Derecho* or *Consideraciones Legales*.

In the cases found, there is hardly a hint of political influence over the decisions. In fact, the Colombian plaintiffs in *Laudo* 25/2013 and the Italian plaintiffs in *Laudo* 21/2014 and in TSP 30 April 2009 prevailed over Cuban companies. In *Laudo* 4/2014, the Cuban company MEDICUBA prevailed over a Colombian seller because of an uncontested gross breach by the latter (delivery of potato fryers instead of muffler repair machines), and in *Laudo* 19/2013, the Cuban company EMIAT prevailed over the Spanish company AGRAPISA because of careful evaluation of the facts and rigorous determination and application of principles of law to the facts. That some plaintiffs and defendants were Cuban companies involved in activities and services of public interest did not appear to make a difference.

What is most worthy of note, however, is the consistent use and interpretation of the CISG. Through all the cases found, the CISG is considered and used as a special law that is of superior rank to the Civil Code and to the recent revisions of Cuban laws of commercial contracts. This is due to a fundamental norm of the Civil Code, contained in the closing rules, the First Final Disposition (*Disposicion Final Primera*), that establishes the rank of the sources of law, declaring special laws of superior rank. On 1 November 2012, the *Decreto Ley* 304 *De La Contratacion Economica* was passed to establish fresh rules about commercial contracts, superseding the Civil Code as well as a previous *Decreto Ley* of *Normas Basicas Para Los Contratos Economicos*. Soon after, the *Decreto* 310 of 17 December 2012 established specific norms for specific types of commercial contracts (such as sale-purchase of goods, agency, etc.). This was a considerable effort to bring the commercial laws of Cuba in line with the modern world; hence one might think that the courts would have given heavy protection to these legal instruments. Instead, the arbitrators of the cases found above did not hesitate to declare that both of these statutes are subordinated to the CISG as an international agreement to be respected and carefully followed.

This open-minded approach is not always followed in the United States. In fact, it is fair to say that the Uniform Commercial Code receives more jealous attention in the United States than DL 304 and DL 310 are given in Cuba. The United States ratified the CISG with a reservation to Article 1 (1) (b), and certain precedents have raised a scholarly controversy over the method of interpretation of obscure passages of the CISG or of gap-filling methods.

Article 7 (1) of the CISG provides that the Convention be interpreted independently from the concepts of specific legal systems and against a background of international principles and concepts.[13] This point was stressed in a strong tone by Professor Franco Ferrari, who not only argued that to use cases based on the UCC to interpret "similar provisions" of the CISG is impermissible, but that to hold that the UCC and the CISG are similar is misleading.[14]

The same theme and conclusions were reached by Professor Francesco Mazzotta, who criticized a trilogy

of American cases that resorted to the UCC to interpret "similar" provisions of the CISG.[15]

The Cuban cases found above stay well clear of the American abuse cited by Ferrari and Mazzotta.

Laudo 4/2014, for example, calls for the *principios cardinales que rigen la Convencion* such as good faith, duty of collaboration and reasonable action.

Laudo 25/2013, on the issue of integration of gaps in the contract, explicitly followed "usages and customs of international trade, as collected, ordained and systematized in the UNIDROIT principles as consistently recognized by scholars for their unquestionable value of clarification."

Laudo 19/2013 alerted about the use of the domestic law for filling gaps of the Convention. The *Laudo* said it could be done, but required special attention not to "duplicate in an unnecessary or capricious way the regulatory standard offered by the Convention and without prejudice to the unifying function that it is called to achieve."

The TSP followed suit in the *Republic Bank* case. Having to fill a gap in the CISG, the TSP held that the method to use is to look at the general principles found in the Convention or, failing this test, those found through a choice of law analysis (not going straight to domestic law).

A Wrap-Up Case

Here is one more case that offers a confirmation of the judicial traits just described, and it adds one very interesting feature.

Empresa Italiana X v. Empresa Mixta Y
Laudo N. 21/2014
Dr. Julio C. Fernadez de Cossio (president of the panel)
Lic. Valentin F. Lopez Alvarez, M. Sc. Narciso A. Cobo Roura

This case has been reported with the names of the parties deleted and substituted with an X for the Italian plaintiff and a Y for the Cuban defendant.

The defendant did not make payment for goods duly received and accepted. The excuse was twofold: The defendant did not receive payments from its "only client" (thus remaining moneyless, in other words asking to be excused for hardship) and because of the new regulations on currency exchange, under which the defendant could not obtain the *carta de uso de liquidez externa* (CL).

When eventually payment could be made, the defendant denied to be bound to pay interest, arguing that the contract contained a clause by which the parties renounced to claim penalties.

The panel addressed the question of the nature of interest, concluding that interest is basically aimed at penalizing a delay, and therefore denied the demand of the plaintiff, due to the waiver of penalties in the contract.

The panel found, as in all of the cases above, that the CISG is part of the law of Cuba and that it contains the principle pacta sunt servanda, but here comes the special feature of this Laudo: a dissenting opinion.

Arbitrator Valentin Francisco Lopez Alvarez, who was also on the panel in *Laudo* 19/2013 and 25/2013, and was the sole arbitrator appointed by the court in Laudo 4/2014, did not agree with the panel and wrote his *Voto Particular* (special ballot or dissenting opinion).

Alvarez wrote that the interpretation of the Convention is to be made in observance of Article 7, which forecloses any citation, comparative view or analysis that springs from the domestic law of any state, even if that state has ratified the Convention. In that case, no recourse should have been made to Cuban domestic law.

The payment of interest, Alvarez wrote, is one of the "pillar principles" of the Convention, and he objected to the panel confusing moratory interest with penalties, and therefore, he concluded, the clause in the contract could never be interpreted as a waiver to claim moratory interest.

Conclusions

If what you see is what you get, Cuban law on the CISG appears to be sound and in good hands. The arbitral

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proceedings have unfolded in reasonable time, lasting between one and two years, especially when substantial discovery appears to have been made. *Laudo* 21/2014, dealing with the running of a statute of limitation on uncontroverted facts, lasted only six months, from April to December 2014.

But we have seen only six cases out of an unknown number. We are looking at the tip of an iceberg. What is hiding in the ice below the water? And why is the online search suddenly blank?[16]

Is it because of another subtle form of censorship (as some may suspect), or is it a protectionist measure for an up-and-coming legal profession on the island? Or is the limited number of "good looking" cases publicly (though not readily) available just a showcase for promotional purposes?

It is hard to tell, but still, the material found is of such high quality, both scholarly and professionally, that it may not have been an overnight making[17] and may well be a signal of positive things to come.

As of today, it appears that the best, if not the only way to "research" the law of Cuba is to resort to the professional help of the Cuban Bar. The Cuban Law Subcommittee of the International Law Committee of The Florida Bar is helping in this direction, with its mission of networking, knowledge and good will. After all, who said that it is the lawyers who make the law?

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Endnotes

1 Lourdes Dávalos León, *The International Contract Under the New Regulation on Economic Contracts in Cuba*, [26] REVISTA ELECTRÓNICA DE ESTUDIOS INTERNACIONALES (2013).

2 *Id.*

3 The inferior Provincial Courts (like the one of *La Habana*) are also organized in chambers and have their own *Camaras de lo Economico*.

4 *See, e.g.*, Laura Patallo Sánchez, *The Role of the Judiciary in a Post-Castro Cuba: Recommendations for Change*, Prepared for the Cuba Transition Project (CTP) Institute for Cuban and Cuban-American Studies, University of Miami, ISBN: 0-9704916-7-0 (2003).

5 Under the rules of the *Corte*, a dispute is considered international when: (a) the establishment or habitual residence of the parties are in different countries; (b) when the parties, having domicile in the same state, are natural or legal persons of different nationality or citizenship; (c) the place of conclusion of the obligation or its performance is in a different state.

6 For the period 2015-2017, the *Corte* lists the names of 21 professional arbitrators and 6 mediators.

7 *See supra*, Fn. 2.

8 This case received an extensive commentary by Jorge Oviedo Alban, a Colombian attorney, professor of civil and commercial law at the University of La Sabana (Colombia). He holds a *maestria* in commercial law of business at the University of Buenos Ayres (Argentina). Alban is an invited researcher at the University of Basel (Switzerland) for the Global Sales Law Project and a member of ASADIP (*Asociacion Americana de Derecho Internacional Porivato*). The article is published in FORO DE DERECHO MERCANTIL, Revista Internacional, 32, July-September, 165-82.

9 *Sala de lo Economico del Tribunal Provincial Popular de La Habana*.

10 This case was taken from the online database of the United Nations Commission on International Trade Law edited by UNCITRAL under the name of CLOUT (Case Law On Uncitral Text), http://www.uncitral.org/uncitral/en/case_law.html. The case is reported only in English, digest form, and not in its original language.

11 Unpublished. Obtained courtesy of attorney Jorge Oviedo Alban.

12 This organization and style mirror that of the French courts, with the difference that the Cuban court gives reasons of law in support of the holding while the French courts do not (to give reasons is tantamount to making law, and with respect to separation of powers, the law should be made only by Congress).

13 *See, e.g.*, DANIEL CHOW & THOMAS SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, (2010 Aspen Publishers Wolters Kluwer), ISBN 978 0 7355 7065 8, 183-84.

14 Franco Ferrari, *The Relationship Between the UCC and the CISG and the Construction of Uniform Law*, 29 LOY. L.A. L. REV. 1021.

15 Francesco G. Mazzotta, *Why Do Some American Courts Fail to Get It Right?,* 3 LOY. U. CHI. INT'L L. REV. 85, *citing to*: *Delchi Carrier Spa v. Rotorex Corporation*, 71 F.3d 1024, (U.S.C.A., 2nd Cir., 1995); *Raw Materials Inc. v. Manfred Forberich GMBH*, 2004 WL 1535839 (N.D.Ill.); *Chicago Prime Packers, Inc. v. Northam Food Trading Co.*, 408 F.3d 894, (U.S.C.A., 7th Cir., 2005).

16 Four of the five cases reported in this article can be found on the University of Madrid website http://www.cisgspanish.com/seccion/jurisprudencia/cuba/. The TSP decision is available on the CLOUT database.

17 The Camara Arbitral website boasts 50 years of arbitration experience.