

# Treibacher industrie

[Law](#), [Contract Law](#)



Treibacher Industrie, A. G. v Allegheny Technologies, Inc (2006) Facts: The case proceeded to a bench trial, where TDY and Treibacher disputed the meaning of the term “consignment”-the delivery term contained in both contracts. ? TDY introduced experts in the metal industry who testified that the term “consignment,” according to its common usage in the trade, meant that no sale occurred unless and until TDY actually used the TaC. Treibacher introduced evidence of the parties' prior dealings to show that the parties, in their course of dealings (extending over a seven-year period), understood the term “consignment” to mean that TDY had a binding obligation to pay for all of the TaC specified in each contract but that Treibacher would delay billing TDY for the materials until TDY had actually used them. TDY now appeals. ? TDY contends that, under the CISG, a contract term should be construed according to its customary usage in the industry unless the parties have expressly agreed to another usage. TDY argues, in the alternative, that the district court erred in finding that, in their course of dealings, Treibacher and TDY understood the term “consignment” to require TDY to use and pay for all of the TaC specified in each contract. ? Finally, TDY contends that, if we uphold the district court's ruling that TDY breached its contracts with Treibacher, we should remand the case for a new trial on damages on the ground that the district court erroneously found that Treibacher reasonably mitigated its damages. SUMMARY AND FINDINGS

A) By analysis of the CISG, which governs the formation of and rights and obligations under contracts for the international sale of goods. ? CISG, arts. 1, 4. ? Article 9 of the CISG provides the rules for interpreting the terms of contracts. ? Article 9(1) states that, “ parties are certain by any usage to

which they have agreed and by any practices which they have established between themselves. ” ? Article 9(2) then states that, “ parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract which under international trade and well known? All parties to contracts of the type involved in the particular trade concerned. ” ? Article 8 of the CISG governs the interpretation of the parties' statements and conduct. ? A party's statements and conduct are interpreted according to that party's actual intent “ where the other party knew ? what that intent was,” CISG, art. 8(1), but, if the other party was unaware of that party's actual intent, then “ according to the understanding that a reasonable person ? would have had in the same circumstances,” CISG, art. (2). ? To determine a party's actual intent, or a reasonable interpretation thereof, “ due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties. ” ? CISG, art. 8(3). Which Treibacher’s materials in consignment store, published usage reports and invoices to support the order made. One of evidence to goods receive parties are known the action made.

In arguing that TDY knowing the term's customary usage takes precedence over the parties' understanding of that term in their course of dealings, in which states that, “ parties are considered, unless otherwise agreed, to have made applicable to their contract” customary trade usages.? In support of its argument, TDY can points it out anytime when they are question and revise the contract in between themselves. If not, intended the word “ agreed,” in

article 9, to mean express agreement, as opposed to silent agreement by course of conduct. ? B)?

The district court did not commit clear error in finding that, in their course of dealings, TDY and Treibacher defined the term “ consignment” to require TDY to accept and pay for all of the TaC specified in each contract. ? The parties do not dispute that they executed, between 1993 and 2000, a series of contracts in which Treibacher agreed to sell certain hard metal powders, such as TaC, to TDY. ? Which TDY has number of times to discuss the contract and terms, also whereby how Treibacher agreed to sell a fixed quantity of materials at a fixed price for delivery to “ consignment. In additional, some of material needs to install upon TDY's request and all the logistic issue follow in between Treibacher and TDY such kept the materials it received from Treibacher in a “ consignment store,” where the materials were labeled as being from Treibacher and segregated from other vendors' materials with all the usage report and record. ? In each instance, TDY ultimately withdrew and paid for the full quantity of materials specified in each contract.

Obviously they had been communicated each other for the order. In regards of damages claims, the district court did not commit clear error in finding that Treibacher reasonably mitigated its damages. ? The CISG requires a party claiming breach of contract to “ take such measures as are reasonable in the circumstances to mitigate the loss. ”, but it places the burden on the breaching party to “ claim a reduction in the damages in the amount by which the loss should have been mitigated. ” ?

In sum, the district court properly determined that, under the CISG, the meaning the parties assign to a contractual term in their course of dealings establishes the meaning of that term in the face of a conflicting customary usage of the term. Which in the normal practices for order and the judgment of the district court is affirmed.? The district court was not clearly erroneous in finding that Treibacher and TDY understood their contracts to require TDY to purchase all of the TaC specified in each contract and that Treibacher took reasonable measures to mitigate its losses after TDY breached. ?