A, a South African chemical company, entered into a contract with B, a United States chemical company, for the supply over a period of time of a certain chemical product (the "Agreement"). According to the Agreement the price was to be determined annually on the basis of certain data to be provided by B. The Agreement also provided for the right to terminate it "[..] if either party is in material breach of the Agreement, which breach remains uncured following thirty (30) days written notice from the non-breaching party [...]". After some years of regular performance of the Agreement, A terminated it on the ground that B had committed a material breach by failing to pay fully two invoices and to provide the necessary data for determining the price for the following year. B commenced arbitration proceedings against A rejecting A’s allegations and claiming on its part damages for A’s alleged defective supplies.

The Agreement contained a choice of law clause stating "[t]his Agreement shall be construed and interpreted in accordance with the laws of Switzerland as applied between domestic parties provided, however, that the express agreements, understandings and provisions contained herein shall always prevail."

The Arbitral Tribunal, though confirming B’s failure to perform properly its obligations, found that A was not entitled to terminate the Agreement because B’s non-performance did not amount to a “material breach”. In reaching this conclusion the Arbitral Tribunal, though acknowledging that the parties by their choice of law clause which referred to “the laws of Switzerland as applied between domestic parties” had implicitly excluded the application of the CISG, after pointing out that the very concept of “material breach” was unknown in domestic Swiss law determined the meaning of the concept in accordance with both Article 25 CISG and Article 7.3.1 UNIDROIT Principles.

A requested the Swiss Supreme Court to set aside the arbitral award on two grounds: first, since the parties had expressly chosen the domestic Swiss law as the law governing their contract, the Arbitral Tribunal, by referring to the CISG and to the UNIDROIT Principles, had exceeded its mandate (Article 190 para. 2 lit. (c) of the Swiss Code of Private International Law); second, by interpreting the Agreement in accordance with the CISG and the UNIDROIT Principles on its own motion without granting the parties the right to be heard on the matter (Article 190 para. 2 lit. (d) of the Swiss Code of Private International Law).
The Supreme Court rejected A’s request. It pointed out that by interpreting the concept of “material breach” in accordance with both Article 25 CISG and Article 7.3.1 UNIDROIT Principles the Arbitral Tribunal did not apply a foreign law excluded by the parties but applied Swiss law which provided that a contract is to be interpreted according to the common intention of the parties or, if no such common intention can be established, according to the understanding of a reasonable person. In the case at hand the contract had been concluded between two companies situated in different countries, so that the reference to both the CISG and the UNIDROIT Principles was perfectly legitimate since parties to an international commercial contract can reasonably be expected to use legal terms in the sense laid down in the two above-mentioned international instruments. As to the objection that the Arbitral Tribunal should have granted the parties the right to be heard concerning its decision to interpret the concept of “material breach” in accordance with the CISG and the UNIDROIT Principles, the Supreme Court denied that the parties should have been given the right to be heard on this matter since to interpret, as the Arbitral Tribunal did, the concept of “material breach” in accordance with the meaning generally attached to it in international contract practice, could hardly have come as a surprise to the parties.