

[Deciding Court]

Osaka District Court

[Date of Decision]

25 March 2011

[Case No.]

2010 (arbitration) No.3

[Source]

Hanrei Times No.1355 p.249, Hanrei Jiho No.2122 p.106

[Summary of Facts]

In relation to a dispute occurring from a sale and purchase agreement of monocrystalline silicon rod that X, a Chinese corporation (the claimant) executed with Y, a Japanese corporation (the respondent), on August 28, 2009, X filed for arbitration to the China International Economic and Trade Arbitration Commission against Y pursuant to an arbitration agreement with Y, and on May 20, 2010, the said commission granted an arbitral award. Japan and China are contracting states to a multilateral treaty called the “Convention on the Recognition and Enforcement of Foreign Arbitral Awards” (Treaty No. 10 of 1961; hereinafter, the “New York Convention”), and have executed a bilateral treaty called the “Japan-China Trade Agreement” (Treaty No. 4 of 1974; hereinafter, the “Japan-China Trade Agreement”); and X submitted a document prescribed under Article 46 Paragraph 2 of the Arbitration Act to the Osaka District Court and requested an enforcement decision of the arbitral award. Y appeared on the examination date of this petition, but did not raise any claims or demonstrate anything regarding the events listed under the items of Article 45 Paragraph 2 of the Arbitration Act.

[Summary of Decision]

Petition admitted

I. “With respect to the recognition and enforcement of this arbitral award, given that this arbitral award is an arbitral award of China, it should be interpreted that the New York Convention and the Japan-China Trade Agreement are applicable.”

“Article VII Paragraph 1 of the New York Convention provides as follows: ‘The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the contracting states nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.’ It is interpreted that this provides that in the case that a contracting state to the said treaty has executed another treaty regarding the recognition and enforcement of arbitral awards, the other treaty is applicable, as the New York Convention and such other treaty are in a relationship similar to general law and special law, so as to speak.”

II. “Then, the Japan-China Trade Agreement would apply to the enforcement of this arbitral award. Article 8 Paragraph 4 of the Japan-China Trade Agreement provides as follows: ‘Both contracting parties bear the obligation to enforce an arbitral award by the related agencies in accordance with the conditions provided by the laws of the country where the enforcement thereof is requested.’ Therefore, the ‘conditions provided by the laws’ of Japan, which is the ‘country where the enforcement thereof is requested’, would apply.”

“The Arbitration Act (Chapter 8) exists in Japan as the laws providing the conditions for the enforcement of an arbitral award. Article 45 Paragraph 1 of the said Act provides that the enforcement of an arbitral award requires the enforcement decision prescribed under Article 46 of the said Act, and Article 46 Paragraphs 7 and 8 as well as Article 45 Paragraph 2 of the said Act provides the requirements of an enforcement decision. Consequently, in this case, the requirements of an enforcement decision of this arbitral award should be determined in accordance with these provisions of the Arbitration Act.”