

Case 106: CISG 1(1)(a); 14; 8(2) and (3); 55; 57(1)

Austria: Supreme Court; 2 Ob 547/93

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The Austrian buyer ordered in Germany a large quantity of chincilla pelts of middle or better quality at a price between 35 and 65 German Marks per piece. The German seller delivered 249 pelts.

The Austrian buyer, without opening the packaged goods, sold them further to an Italian pelt dealer at the same price. The Italian dealer returned 13 pelts arguing that they were of inferior quality to that agreed. The Austrian buyer sent to the German seller an inventory list setting out the rejected pelts and refused to pay their price arguing that it had sold the pelts further on behalf of the German seller as its agent.

The first instance court ordered the Austrian buyer to pay the price of the rejected pelts, since the pelts were as specified in the contract. Having found that pelts of middle quality were sold in the market at a price up to 60 German Marks, the court considered that a price of 50 German Marks per pelt was a reasonable one.

The Court of Appeal confirmed that decision. It found that CISG was applicable since the parties had their places of business in States parties to the Convention and the subject matter of the dispute fell within the scope of application of the Convention. The Court of Appeal further found that a valid contract had been concluded on the basis of the order, which was sufficiently definite both as to the quantity and the quality of the goods.

The Court of Appeal further found that the agreement as to the price range (35 to 65 German Marks) did not preclude the valid conclusion of a contract since under article 55 of the Convention, if the price is not explicit or implicit in the contract, the parties are considered to have agreed on the usual market price. The Court of Appeal noted that the price of 50 German Marks per pelt, which had been established by the court of first instance based on the market price, had not been questioned by the parties. As to the currency of payment, the court found that payment was due in German Marks, since payment should be made at the place of business of the German seller (article 57 CISG).

The Supreme Court confirmed the decision of the Court of Appeal. It found that the Convention was applicable since an international sales contract in the sense of article 1(1)(a) CISG was involved. It also found that the order was sufficiently definite to constitute an offer under article 14 CISG, since it could be perceived as such by a reasonable person in the same circumstances as the seller (article 8(2) and (3) CISG). In determining that the order was sufficiently definite, the Supreme Court took into consideration the behaviour of the Austrian buyer who accepted the delivered goods and sold them further without questioning their price, quality or quantity. In particular, the price was found to be sufficiently definite, so as to make the application of article 55 CISG unnecessary. As to the place of payment, the Supreme Court found that it was the place of business of the seller since the goods were sent by post and no third party had been appointed to receive payment in Austria on behalf of the German seller.