

Case 306: CISG 1; 8(1)

Austria: Supreme Court; 2 Ob 163/97b

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A German buyer, plaintiff, ordered frames for mountain bikes from an Austrian seller, defendant. The buyer alleged lack of conformity and claimed the restitution of an advance payment made by it to the seller.

The court determined that the CISG was applicable in accordance with article 1 CISG and remanded the case to the court of appeal, which had applied Austrian domestic law. Referring to various articles of the CISG and focussing on article 8(1) CISG (intent of party making statements or engaging in conduct), the court instructed the court of appeal to make the necessary findings of the facts with respect to the offer and the order of the goods, and to decide the case accordingly.