

**Case 894: CISG 7(2); 35; 45; 50**

Switzerland: Federal Court; 4C.144/2004

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Original in German

Published in German: [www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm](http://www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm)

[http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=20.12.2006\\_4C.314/2006](http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=20.12.2006_4C.314/2006)

[www.polyreg.ch/d/informationen/bgeunpubliziert/Jahr\\_2004/Entscheide\\_4C\\_2004/4\\_C.144\\_\\_2004.html](http://www.polyreg.ch/d/informationen/bgeunpubliziert/Jahr_2004/Entscheide_4C_2004/4_C.144__2004.html);

[www.cisg-online.ch](http://www.cisg-online.ch), No. 848; [www.unilex.info/case.cfm?pid=1&do=case&id=991&step=FullText](http://www.unilex.info/case.cfm?pid=1&do=case&id=991&step=FullText);

Published in English: <http://cisgw3.law.pace.edu/cases/040707s1.html>

Abstract in German: *Internationales Handelsrecht* (6/2004), p. 252 s.

English translation: <http://cisgw3.law.pace.edu/cases/040707s1.html>;

[www.unilex.info/case.cfm?pid=1&do=case&id=991&step=Abstract](http://www.unilex.info/case.cfm?pid=1&do=case&id=991&step=Abstract)

<http://www.globalsaleslaw.com/content/api/cisg/urteile/848.pdf>

Abstract prepared by Thomas M. Mayer

The Federal Court referred here to rules for the administration of proof as set forth in a previous judgement, dated 13 November 2003, based on the general principles of the CISG (article 7 (2)). The court again reaffirmed that a buyer who accepted goods without reservation and took possession of them had to prove their defective nature inasmuch as it inferred rights therefrom.

In the case ruled on, a Swiss buyer received a consignment of pipes and cables in 30 packages from a Milanese company. Without checking the quantity, the buyer's warehouse manager confirmed, on the delivery documents, the receipt of the goods, which had been packed on pallets and in drums. Three days later, the buyer examined the goods and found that part of the order was missing. The seller maintained that the entire order had been delivered. The court concluded that, in the circumstances indicated, it fell to the buyer to prove that the consignment was incomplete and it referred the case to the lower court for investigation.

The court observed that the buyer had paid in full for the disputed consignment and invoked a right to claim set-off, on the basis of unjust enrichment, against payment of the sale price of a subsequent order. The question of the existence of any such right was determined not in accordance with the CISG but in accordance with the law designated by Swiss private international law. The same applied to the question of admissibility of the set-off.