

Case 752: CISG 35

Austria: Oberster Gerichtshof

7 Ob 302/05w

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The Serbian claimant bought frozen pork-liver from the Austrian defendant in order to import it to Serbia. No specific level of quality was agreed upon nor any guidelines regarding the import to Serbia were given by the buyer. Although the goods were fully compatible with EU-regulations and absolutely qualified for consumption, they were regarded as defective and therefore rejected by the Serbian customs authorities. Due to the failed import of the goods the buyer suffered damages for which it sued the seller at an Austrian district court.

The lawsuit was dismissed by all three judicial instances. The Supreme Court confirmed that according to its constant jurisprudence the conformity of the goods to the purposes for which goods of the same description would ordinarily be used – Art. 35 (2)(a) CISG – is to be assessed according to the standards in the country of the seller. It is up to the buyer to take into account the provisions and standards of its country and, if need be, to include them into a specific agreement according to Art. 35 (1) or (2)(b). As in the given case the buyer had failed to specify particular requirements as to the quality of the product no liability of the seller was assumed.