

ANNEX IX

Articles 38-40 of ULIS

Response by the representative of Austria to the
comments of the representative of the United States

[Original: French]

With regard to the word "container", there might in fact be a small problem of interpretation. Theory and practice relating to carriage of goods have no doubt evolved a definition which excludes cans and bottles. I shall inquire into this.

I admit that you are right regarding the lack of flexibility of the provisions relating to the time for the inspection and I shall revert to this a little later. I cannot, on the other hand, share your idea that the time-limits should vary according to whether the buyer wishes to retain either the right to have the contract avoided or other rights. In the first place, at the time he embarks on the examination of the goods he does not suspect any lack of conformity nor the seriousness of any such lack of conformity; it would seem to me illogical to allow him a shorter period of time in the case of one kind of remedy. Secondly, there are two kinds of avoidance of a contract: immediate avoidance (article 43) and avoidance after allowing a Nachfrist, or additional period of time (article 44, paragraph 2). It seems to me that your proposal regarding article 38, paragraph 1, could cover only the first, otherwise the remedies set out in article 44, paragraph 2, would in some cases be inadequate. In any event, that would seem to me to lead to an extremely complicated system.

Articles 38 and 39 tend above all to exclude late claims in order to ensure security of rights. Almost automatically, a certain degree of inflexibility results and this becomes severe, or at least apparently so, by the frequent use of the word "promptly". This word, as well as the ambiguity resulting from the fact that the expression (not defined) "a reasonable time" is used in almost as many places in ULIS, has already been criticized by my Government in its earlier comments. This is a more general problem which cannot be resolved in connexion with a

small group of articles but one with which the Working Group should deal before taking up chapter III and the following chapters. Personally, I should be somewhat inclined to allow the buyer a fixed period of time (for example, one week, one month, etc.) to give valid notice of a lack of conformity, the time-limit to commence from the time of delivery or, in the case of carriage of goods, from the time indicated in article 38, paragraphs 2 and 3. Such a provision cannot, however, be contemplated without the question of time-limits in general having first been settled.

I have therefore some hesitation regarding your suggestion concerning articles 38 and 39 since it is nowhere stated that the buyer should have discovered the lack of conformity within a certain period of time. It is stipulated only that, in the case of carriage of goods, the buyer shall not be held to discover the lack of conformity before a given moment.

I am not particularly attached to article 38, paragraph 4, but I do not think that it is a provision already contained in articles 3 and 9 which deal with the possibility of usages prevailing over ULIS. Paragraph 4 is a rule relating to a conflict in a matter not dealt with in ULIS (and therefore also not covered by article 17) and refers back to the sources of law of the place where the goods are examined.