

ANNEX X

Articles 38-40 of ULIS

Comments and proposals of the representative of Kenya

/Original: English/

The representative of Kenya had earlier expressed his agreement with the proposals of the Austrian representative, but in view of the later comments by the representative of the United States and the representative of Austria, I may be permitted to reiterate the following, albeit belatedly:

1. With regard to Article 38(2) it has been suggested that it lacks precision and that it be amended by adding the word "promptly" immediately after the word "them". However, in view of the wording of Article 38(1) which expressly states that the buyer shall examine the goods, ..., promptly I would doubt whether the omission of the word "promptly" in 38(2) makes a material difference?

2. I have no objection to the proposed amendment to Article 38(3) as I think the amended version is simpler and clearer.

3. I don't, however, go along with the suggestion by the United States representative that Article 38(1) is "an unnecessary duplication of what is clear from the first sentence of article 39(1)," for the simple reason that having placed an obligation on buyer to examine the goods it then goes further to specify when such examination must take place. It is pointed out that the use of the word "promptly" in Article 39(1) refers to the notice of lack of conformity and not to the examination of the goods with a view to ascertaining their conformity. However, I agree with the United States representative that it may not be enough to say that the buyer "shall" examine the goods without giving an indication of the consequences of his failure to examine. But while I would find little difficulty in accepting the suggested amendment to article 38(1), like the Austrian representative, I am not persuaded that the suggested amendment to article 39 really solves the problem. I would, therefore, be content with the Austrian proposals.

4. I have no comments on Article 40 of ULIS and would have no objection to its retention as it is.