

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

OVERVIEW

1. Under article 39, a buyer who claims that delivered goods do not conform to the contract has an obligation to give the seller notice of the lack of conformity. The provision is divided into two subsections addressing different time periods for the required notice: article 39 (1) requires that notice of lack of conformity be given within a reasonable time after the buyer has discovered or ought to have discovered the lack of conformity; article 39 (2) specifies that, in any event, the buyer must give the seller notice of the claimed lack of conformity within two years of the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee. As noted in Paragraphs 5, 7, 9, 14 and 19 below, other provisions of the CISG—including those governing interpretation of the parties' statements and conduct (article 8), the effect of practices established between the parties and trade usages (article 9), form requirements (articles 11 and 29), contract formation (articles 14-24), and the effectiveness of properly transmitted notice (article 27)—govern aspects of notice under article 39.¹

SCOPE OF ARTICLE 39

2. The notice obligation imposed by article 39 applies if the buyer claims that delivered goods² suffer from a lack of conformity, regardless of the cause of such non-conformity.³ The concept of conformity is defined in article 35. The great majority of decisions applying the article 39 notice requirements involve claims that the goods were defective or otherwise not of conforming quality under article 35, including that the goods were not adequately contained or packaged as required by article 35 (2) (d).⁴ Nevertheless, the article 39 notice obligation has been applied not only to breaches of the quality obligations imposed by article 35, but also to a breach of a contractual warranty made in derogation of article 35.⁵ On the other hand, where the seller had agreed to reimburse the buyer's costs in servicing goods (television sets) resold to the buyer's customers to the extent that the defect rate in the delivered goods exceeded five per cent, the court held that this provision "does not amount to a warranty agreement in the classical sense, to which articles . . . 38 and 39 CISG would be applicable"; the buyer's failure to examine and give

notice as required by articles 38 and 39 CISG, therefore, did not relieve the seller of its obligations under this clause.⁶ Article 39 has been applied where the claimed lack of conformity was a failure to provide proper instruction manuals to accompany the goods,⁷ and where a buyer claimed that the seller's attempts to repair delivered goods (attempts made after the buyer had originally notified the seller of a lack of conformity) were unsuccessful.⁸ A buyer's allegation that the seller breached not only its obligations under article 35 but also a duty to provide information about the lack of conformity did not eliminate the buyer's obligation to give notice under article 39, according to one decision.⁹ It has been held that article 39 requires notice when the buyer claims that an inadequate quantity (as opposed to quality) of goods was delivered,¹⁰ as well as when the buyer claims that the seller delivered too many goods.¹¹ Each separate lack of conformity (with respect to each delivery, in the case of instalment contracts) is subject to the notice requirement,¹² and the fact that the buyer may have given proper notice as to one defect does not necessarily mean it has given valid notice as to all claimed non-conformities.¹³

CONSEQUENCES OF FAILURE TO GIVE NOTICE

3. Both article 39 (1) and article 39 (2) state that failure to give the requisite notice results in the buyer losing the right to rely on the lack of conformity. This appears to mean that the buyer loses the right to any remedy for the non-conformity, including, e.g., the right to require the seller to repair the goods,¹⁴ the right to claim damages,¹⁵ the right to reduce the price,¹⁶ and the right to avoid the contract,¹⁷ although one court appears to have permitted a buyer to partially avoid the contract based on a lack of conformity that had not been timely noticed.¹⁸ Failure to satisfy the notice requirements of article 39 eliminates a buyer's defence, based on a lack of conformity in delivered goods, to a seller's claim for payment of the price.¹⁹ One court has stated that, where a buyer fails to satisfy the notice requirements of article 39, "[t]he buyer remains obliged to perform all obligations under the contract, namely, to accept the goods with any defects and to pay the purchase price as a consequence thereto."²⁰ It should also be noted that a buyer's remedies for a lack of conformity concerning which it has not given proper notice may be restored in whole or in part under CISG articles 40 and 44.²¹

BURDEN OF PROOF AND EVIDENCE

4. There appears to be a consensus in reported decisions that the buyer bears the burden of proving that it gave the required article 39 notice of non-conformity. This position has been adopted both expressly²² and by implication.²³ Although several decisions have invoked domestic legal rules to justify allocating the burden to the buyer,²⁴ a larger number have based their allocation on CISG itself.²⁵ Decisions by Italian courts, for example, have expressly rejected reliance on domestic law in determining the burden of proof, and have discovered a general CISG principle (in the sense of article 7 (2)) requiring the buyer to prove valid notice.²⁶ One decision explained that, to carry its burden, a buyer must prove when the non-conformity was discovered, the time and exact addressee of the notice of non-conformity, and the way in which the non-conformity was described in the notice; the court held that the buyer's general statement that it had notified the seller that many deliveries were non-conforming was not sufficient because the statement failed to identify the specific deliveries and non-conformities covered.²⁷ Another decision declared that a buyer "must prove when he became aware of the defects and to whom and how he gave notice."²⁸ Yet another decision held that the buyer failed to carry its burden of proving timely notice where its allegations of oral notice were denied by the seller, and the buyer had failed to indicate precisely when it gave notice or the specific deliveries to which such alleged notice related.²⁹ The buyer's proof also failed where witnesses could not confirm that notice had in fact been faxed because the witnesses had not personally sent the fax and were not present when it was allegedly dispatched; furthermore, the witnesses disagreed as to the addressee of the alleged fax.³⁰ Testimony by witnesses concerning a phone call made in their presence but in a foreign language has also been deemed inadequate proof.³¹ On the other hand, where a buyer submitted delivery notes showing when the goods had been returned to the seller, along with copies of accompanying letters that specified the lack of conformity which prompted the return, the court found that the buyer had shown that it satisfied the requirements of article 39.³²

FORM OF NOTICE

5. Article 39 does not specify the form of notice required, although the parties can by agreement require a particular form.³³ Absent such an agreement it has been stated that, in light of articles 11, 29 and 7 (2) CISG, "the buyer is free to use any form in order to notify a non-conformity."³⁴ Notice in written form, specifically including fax messages and registered mail³⁵ or e-mail,³⁶ has been found satisfactory. Notice given by filing a cross-claim in a law suit, it has been implied, could satisfy the requirements of article 39—although on the facts of the case such notice was held to be untimely.³⁷ The contents of a series of communications have been combined in order to satisfy the article 39 requirement;³⁸ similarly, in determining the propriety of a buyer's written notice of a pony's lack of conformity, a court took into account the fact that the buyer had, before a "final diagnosis" of the pony's condition was made, "continuously advised the seller" of the pony's worsening condition;³⁹ another decision indicated that, if the buyer's notice left the seller unclear concerning the nature or extent of the claimed lack of conformity,

"the seller can be expected to inquire of the buyer".⁴⁰ It has been suggested that a buyer's cross-claim alleging delivery of non-conforming goods, filed in response to the seller's law suit to collect the purchase price of the goods, might constitute notice of lack of conformity under article 39 (1), although such notice was held to be untimely.⁴¹

6. Oral notice that occurred when the seller, at the buyer's suggestion, inspected the goods on the premises of the buyer's customer has been deemed adequate both in form and content.⁴² Oral notice by telephone has also been found sufficient,⁴³ although in several cases evidentiary issues have caused a buyer's claim to have given telephonic notice to fail.⁴⁴ It has been held that a buyer claiming to have given notice by telephone must prove when the call took place, to whom the buyer spoke, and the information conveyed concerning the lack of conformity; failure to prove these elements prevents a buyer from establishing that the article 39 notice requirement was satisfied.⁴⁵ In one decision, moreover, a court appeared to impose special requirements for sufficient oral notice by stating that, if the seller failed to respond to telephone notice given to the seller's agent, the buyer was obliged to follow-up with written notice to the seller.⁴⁶ Where the buyer's representative testified with particularity as to the time, manner and content of telephonic notice, as well as to the specifics of related information discussed in the phone call, and the seller's employee who allegedly received the call testified merely that she did not recall the conversation, a court held that the buyer had provided sufficient evidence of notice.⁴⁷ Finally, a court has rejected a buyer's argument that it gave implied notice of lack of conformity when it refused to pay the seller, holding that the notice required by article 39 must be express.⁴⁸

TO WHOM AND BY WHOM MUST NOTICE BE GIVEN

7. Article 39 states that the required notice of lack of conformity must be given to the seller.⁴⁹ Thus it has been stated that communications between the buyer and its customer concerning defects in the goods did not satisfy the article 39 notice requirement because they did not involve the seller.⁵⁰ Notice given to the manufacturer of the goods, rather than the seller, has also been held insufficient, unless it was shown that the manufacturer conveyed the information to the seller within the reasonable time specified in article 39 (1).⁵¹ Notice of defects conveyed by the buyer to an independent third party who had acted as an intermediary in the formation of the contract but who had no further relationship to the seller was found not to have been given by means appropriate in the circumstances within the meaning of article 27, and thus the buyer bore the risk when the notice was not received by the seller.⁵² Similarly, notice given to an employee of the seller who was not authorized to receive such communications but who promised to transmit the information to the seller was found to be insufficient when the employee in fact did not inform the seller; the court noted that, when notice is not given to the seller personally, the buyer must ensure that the seller actually receives the notice.⁵³ On the other hand, it has been found that notice given to an agent of the seller would satisfy article 39, although the question of the recipient's agency status and authority were matters beyond the

scope of CISG to be determined under applicable domestic law.⁵⁴ And notice given to a member of the seller's corporate group was found sufficient where the entity that received the notice shared responsibility for the sale with the seller.⁵⁵

8. Article 39 specifies that it is the buyer who is required to give the seller notice of a lack of conformity. Nevertheless, notice sent by the buyer's customer to the seller has been held to satisfy the requirements of article 39 where that notice contained a clear and timely complaint about the quality of goods that the seller had delivered to the buyer, and the seller accepted the complaints as notice of lack of conformity in its delivery to the buyer by responding with questions to the buyer about the defect as well as a request to examine the goods in the buyer's control.⁵⁶

AGREEMENTS RELATING TO NOTICE

9. Article 39 is subject to the parties' power under article 6 to derogate from or vary the effect of any provision of the Convention.⁵⁷ A significant number of decisions have involved agreements relating to the buyer's obligation to give the seller notice of claims that the goods do not conform to the requirements of the contract.⁵⁸ Such agreements have generally been enforced, and buyers have several times lost the right to complain of a lack of conformity because they failed to comply with the terms of such an agreement.⁵⁹ A few decisions, however, appear reluctant to enforce contractual provisions governing notice: they rely on the standards of article 39 even though the parties' contract included clauses addressing notice of defects,⁶⁰ and/or they suggest that the contract provisions are enforceable only to the extent they are judged reasonable by the standards of article 39.⁶¹ Of course to be enforceable under any approach, terms relating to notice of lack of conformity must have become part of the parties' agreement under applicable contract formation rules, which in the case of CISG are found in Part II of the Convention. Thus it has been found that, although the parties can derogate from article 39, they had not done so where a clause requiring the buyer to give notice within eight days of delivery was illegible and appeared on documents unilaterally generated by the seller after the contract was concluded.⁶² Parties also have been found not to have derogated from article 39 just by agreeing to an 18-month contractual warranty,⁶³ to a provision requiring the goods to be delivered in "ready-for-use condition,"⁶⁴ or to a guarantee agreement that did not expressly address the buyer's obligation to give notice of lack of conformity.⁶⁵ On the other hand, it has been recognized that a trade usage relating to notice of defects can derogate from article 39 if the trade usage is binding on the parties under CISG article 9.⁶⁶ It has been held that a seller's standard term requiring the buyer to give written notice of claimed defects in the goods within eight days of delivery was incorporated into the contract where the buyer was familiar with the term from the parties' prior dealings and the seller had expressly referred to its standard terms in his offer;⁶⁷ and that the seller's standard terms requiring notice of lack of conformity within five days after delivery became part of the contract where the buyer, without objection, signed and returned an invoice containing those terms.⁶⁸ On the other hand, a court found it unnecessary to determine whether the notice period specified in the seller's standard terms had

become part of the contract where application of the "reasonable time" period for giving notice under article 39 (1) led to the same result.⁶⁹ To the extent an agreement by the parties relating to notice of non-conformity fails to address particular issues, the provisions of article 39 have been invoked to fill the gaps.⁷⁰

WAIVER BY THE SELLER OR THE BUYER

10. Although article 39 gives a seller the right to prevent a buyer from relying on a lack of conformity if the buyer does not give the seller timely and proper notice thereof, a seller can waive this right by leading the buyer to think that the seller would not object to the buyer's notice.⁷¹ Thus where the seller, after receiving notice from the buyer that the delivered goods were not conforming, declared that it would give credit for the goods if the buyer's complaints about defects were confirmed, one court found that the seller had waived its right to object to the timeliness of the buyer's notice.⁷² On the other hand, a court invoked domestic law and a policy to encourage amicable settlements in concluding that a seller had not waived its right to claim that notice was untimely: the fact that the seller had accepted return of the goods in order to examine them and had granted the buyer a provisional pro forma credit for the price did not constitute a waiver, the court held.⁷³ Another court has found that the mere fact that the seller examined the goods, at the buyer's request, after receiving the buyer's complaint of lack of conformity did not constitute a waiver of the right to argue that the buyer's notice of non-conformity was late.⁷⁴ A court has stated that a seller can waive its rights under article 39 either expressly or impliedly, and that implied waiver requires specific indications that would lead the buyer to understand that the seller's actions constituted a waiver; the court went on to conclude that, although the seller in the case had not waived its right to object to the timeliness of notice of a lack of conformity merely by entering into settlement negotiations with the buyer over the non-conformity, the seller's willingness to negotiate—in combination with the extended period during which such negotiations continued (15 months), the failure of the seller to reserve its rights under article 39 during that time, and the seller's actions in acceding to the buyer's request to pay for an expert to examine the goods and in offering the buyer damages equal to seven times the price for the goods—supported the conclusion that the seller had waived its right to object to late notice.⁷⁵ And where a seller had acknowledged that it had delivered the wrong goods, and had offered to provide the correct item, a court found that the seller had waived its right to rely on a lack of notice under article 39.⁷⁶ On the other hand, where the seller entered into settlement negotiations but never acknowledged that it had delivered non-conforming goods, denied any responsibility for the claimed deficiency, and never indicated any willingness to pay any compensation, the court found that the seller had not implicitly waived its rights under article 39.⁷⁷ A Supreme Court held that the seller can even partly waive its right under article 39 and partly reserve it or reserve it for certain remedies only and can do this expressly or impliedly.⁷⁸

11. Another court has distinguished between waiver of a seller's article 39 rights and estoppel from asserting such rights: it concluded that the seller had not waived its right to

object to late notice because the intention of parties to waive rights had to be very clearly established, and the mere fact that the seller did not immediately reject the notice as late at the time it was given was not sufficient evidence of waiver; on the other hand, by remaining in communication with the buyer in order to keep informed of the buyer's customer's complaints, and by making statements to the buyer indicating that the seller would not raise the defence of late notice, the seller became estopped from invoking that defence when the buyer relied on the impression that the seller would not complain of untimely notice.⁷⁹

12. Buyers have also been deemed to have waived (or to be estopped from exercising) their rights under article 39 when they affirmatively indicated acceptance of delivered goods and/or acknowledged an obligation for the price without raising objection to defects that were apparent. Thus a buyer was found to have lost its right to complain about missing parts and defects that should have been discovered when it agreed to the amount of a disputed balance remaining on the purchase price and signed bills of exchange for that balance.⁸⁰ Similarly, a buyer who negotiated a reduction in the price of video recorders on the basis of certain defects lost its right to object to other defects known to the buyer at the time the price-reduction was agreed to.⁸¹ And a buyer who paid outstanding invoices with bank cheques and then stopped payment on the cheques before they were honoured was deemed to have lost its right to complain of defects known when the cheques were provided.⁸²

ARTICLE 39 (1)—PURPOSES

13. Article 39 (1) requires a buyer who claims that the goods do not conform to the contract to give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it. This requirement has been deemed to serve several different purposes. A number of decisions indicate that a purpose is to promote prompt clarification as to whether a breach has occurred.⁸³ It has also been suggested that the required notice is designed to give the seller the information needed to determine how to proceed in general with respect to the buyer's claim,⁸⁴ and more specifically to facilitate the seller's cure of defects;⁸⁵ or "to take the necessary measures, such as to send a representative to the buyer to examine the goods, to secure the necessary evidence for potential disputes regarding conformity of the goods, to offer exchange, additional delivery or cure the defect, or to have recourse against a supplier."⁸⁶ In the case of an instalment contract it has been suggested that one purpose of article 39 notice is to clarify whether the buyer can expect the seller make further deliveries.⁸⁷ One decision states that the purpose is to promote the quick settlement of disputes and to assist the seller in defending himself.⁸⁸ It has also been suggested that article 39 (1) assists the seller in defending himself against invalid claims.⁸⁹ The notice requirement has also been associated with a buyer's obligation of good faith.⁹⁰ One decision asserts that the purpose of article 39 (1) notice is to permit a seller to prepare to defend itself against the allegations of lack of conformity and also, on the particular facts of the case, to serve the public health by allowing the seller to take measures against the spread of a virus allegedly infecting the goods (fish eggs).⁹¹

CONTENTS OF NOTICE; SPECIFICITY REQUIRED

14. The notice required by article 39 (1) must "specify the nature of the lack of conformity. . .". This language has been interpreted and applied in a large number of decisions. Article 8 of the CISG, governing interpretation of the parties' statements and conduct, has been applied in determining whether a buyer's notice was sufficiently specific.⁹² Where the seller was a professional, notice was found to be adequate because it employed precise technical terms and prompted the seller to examine the goods—itsself an indication that the notice was a sufficient communication.⁹³ Several decisions have made general pronouncements concerning the specificity requirement. It has been said that notice of the mere fact of a lack of conformity is insufficient, but that the buyer must specify the precise nature of the defects;⁹⁴ that mere general formulations are insufficient, and the notice "must be precise,"⁹⁵ although the notice need not "specify the shortcomings in detail";⁹⁶ that notice whose content did not prevent the seller from having an opportunity to cure the lack of conformity is sufficiently specific;⁹⁷ that notice should indicate both the nature and the extent of the lack of conformity, and should convey the results of the buyer's examination of the goods;⁹⁸ that notice should be specific enough to allow the seller to comprehend the buyer's claim and to take appropriate steps in response,⁹⁹ e.g., to examine the goods, to secure necessary evidence for potential disputes, to arrange for a substitute delivery or otherwise remedy the lack of conformity, or to have recourse against a supplier;¹⁰⁰ that the notice must give the seller "a complete picture of the complaints";¹⁰¹ that the purpose of the specificity requirement is to enable the seller to understand the kind of breach claimed by the buyer and to take the steps necessary to cure it, such as initiating a substitute or additional delivery;¹⁰² that notice should be sufficiently detailed that misunderstanding by the seller would be impossible and the seller could determine unmistakably what the buyer meant¹⁰³ without further investigation;¹⁰⁴ that the notice should be sufficiently specific to permit the seller to know what item was claimed to lack conformity and what the claimed lack of conformity consisted of;¹⁰⁵ that "[t]he buyer will be expected to identify whether and to which extent he relies on an insufficient delivery, which specific deviations in terms of quality are complained about, and in what respect the delivered goods form a mere *aliud* compared with the goods owed under the contract;"¹⁰⁶ and that notification "must enable the other party to recognize the intention to complain about the condition of the goods and must specify the nature of the lack of conformity so as to enable the seller to understand what the buyer is complaining about."¹⁰⁷

15. Several decisions have emphasized that the notice should identify the particular goods claimed to be non-conforming;¹⁰⁸ one such decision found that, even though the piece of agricultural machinery that the buyer claimed was defective was the only one of its type that the buyer had purchased from the seller, the specificity requirement was not satisfied where the notice failed to identify the serial number or the date of delivery, because the seller should not be forced to search its files for the records of the machine in question.¹⁰⁹ A number of decisions have noted that each claimed non-conformity must be specifically described, and the fact that notice may be sufficiently specific as to one

defect does not mean that the notice requirement for other claimed defects is satisfied.¹¹⁰ It has been stated that discrepancies in the quantity of goods delivered must be specified with precision.¹¹¹ The specificity requirement has been applied to oral notice of lack of conformity.¹¹² On the other hand, it has been stated that notice which informs the seller of the “main result of an examination . . . so that he is able to assess the deficiency” is sufficient;¹¹³ several decisions, furthermore, have warned against setting up an overly-demanding standard of specificity,¹¹⁴ and a decision has indicated that, if the buyer’s notice left the seller unclear concerning the nature or extent of the claimed lack of conformity, “the seller can be expected to inquire of the buyer.”¹¹⁵ It has also been suggested that different standards of specificity are required of different kinds of buyers, with expert buyers expected to provide more detailed notice;¹¹⁶ and that the specificity standard includes “both objective and subjective elements” and “takes the positions of both the buyer and the seller in their commercial transaction into account, any possible cultural differences as well as, in particular, the nature of the goods.”¹¹⁷ It has also been held that the specificity requirement is satisfied by a description of the symptoms of a lack of conformity, and that an explanation of the underlying causes is not required.¹¹⁸

16. The following descriptions of a lack of conformity have been found to be sufficiently specific to satisfy article 39 (1): “detailed notice” that included photographs showing defects in the goods (shoes);¹¹⁹ letters stating, “right boot dissolves on the side, insufficient leather”, “left boot front leather bulges, bothers while walking”, “boot dissolves on the right side, material insufficient, cannot be repaired” or “right boot top in the middle, loose seam”;¹²⁰ notice specifying that pallets of bottles had been incorrectly piled and the surrounding foil had been torn apart;¹²¹ notice specifying that frozen pepper slices were “yellow and glassy,” 36 per cent were broken, their length was less than 3 cm, and they were sticky and icy;¹²² notice indicating the goods (a machine) were not functional;¹²³ a detailed description of the physical condition of sheep that had been warranted as ready for slaughter, along with a declaration that they did not comply with applicable national regulations governing sheep for slaughter and could not be accepted by the buyer—by which the seller should have understood that the buyer was objecting to the weight of the sheep;¹²⁴ notice that glass game pieces delivered by the seller were broken, that some of the delivered game pieces were “half pieces,” and that the contents of plastic bags containing the pieces were faulty;¹²⁵ notice informing a shoe seller that the buyers’ customer had received an alarming number of complaints about the goods, that the shoes had holes, and that the outer sole and heel of the children’s shoes became loose;¹²⁶ notice to a seller of a machine for processing moist hygienic tissues that the buyer’s customer had found steel splinters in semi-finished products produced by the machine, resulting in patches of rust on the finished products;¹²⁷ notice that floor tiles suffered from serious premature wear and discoloration;¹²⁸ notice that occurred when the seller was actually shown the non-conforming goods on the premises of the buyer’s customer.¹²⁹ It has also been held, with respect to a sale of various species of plants, that notice describing the lack of conformity by species was sufficient—the buyer did not have to specify the defects in each individual plant.¹³⁰

17. The following descriptions in notices have been found not to satisfy article 39 (1) because they were insufficiently specific:¹³¹ notice stating that the goods, poppy seeds, were contaminated by caraway, whereas they were in fact contaminated by feverfew;¹³² notice merely reminding the seller that the machines had not yet been installed in ready-for-use condition;¹³³ “general complaints (‘not alright’, ‘inadequate characteristics’, ‘wrong delivery’, ‘poor quality’, ‘bad construction’) as well as any general statements of dissatisfaction (‘not according to our expectations’)”;¹³⁴ a telephone call in which the buyer merely ordered new goods and, at most, communicated that the goods had undergone damage;¹³⁵ notice that merely mentions the lack of conformity incidentally among several matters, and that indicates the lack of conformity is no longer of importance;¹³⁶ a general complaint that goods were missing from deliveries, without specify precisely which goods were lacking;¹³⁷ a communication that the buyer’s customer had complained about the goods, without further details;¹³⁸ notice stating particular functional faults and missing parts in machinery, but failing to state that the goods were non-functional based on construction;¹³⁹ the buyer’s entry of a reduced price on contract records;¹⁴⁰ notice stating merely that the buyer would not settle its account with the seller concerning a delivery;¹⁴¹ notice that glass game pieces delivered by the seller were broken, but that failed to state that some of the delivered game pieces were “half pieces,” and that the contents of plastic bags containing the pieces were faulty;¹⁴² notice that stones for the facade of a building were mislabelled, that some stones and sills were not the proper size, and that the glue provided for mounting the stones was defective, where the notice failed to specify which specific items were unlabelled, the quantity and specific items that were of the wrong size, and the exact quantity of stones treated with the defective glue;¹⁴³ notice that flowering plants were in miserable condition and suffered from poor growth (the court noted that the latter might refer to either the size or the appearance of the plants);¹⁴⁴ notice that cotton cloth was of bad quality;¹⁴⁵ notice that furniture had wrong parts and much breakage;¹⁴⁶ notice of poor workmanship and improper fitting as to fashion goods;¹⁴⁷ notice that failed to specify that cheese was infested with maggots;¹⁴⁸ notice that the quality of fabric was objectionable and the dimensions of the delivered cloth prevented it from being cut in an economical fashion, where the notice failed to specify the nature of the quality problems and failed to indicate what dimensions would permit economical cutting;¹⁴⁹ notice that agricultural machinery failed to function properly but that did not specify the serial number or the delivery date of the machine;¹⁵⁰ notice that induction plates were defective but they did not specify the serial number that would identify the delivery date;¹⁵¹ notice that truffles had softened when they in fact contained worms, even though most professional sellers would understand that softness implied worms;¹⁵² notice that shoes were not of the quality required by the contract, but which did not describe the nature of the defects;¹⁵³ notice that frozen bacon was rancid, but which did not specify whether all or only a part of the goods were spoiled;¹⁵⁴ notice that documentation for a printer was missing, where it was ambiguous whether the buyer was referring to the entire printing system or just the printer component of system;¹⁵⁵ notice that sheets of vulcanized rubber for shoe soles had problems or contained defects;¹⁵⁶ notice stating that leather goods did not conform to the buyer’s specifications, could not be sold to

the buyer's customers, and 250 items were badly stamped;¹⁵⁷ notice that five reels of blankets were missing, but which did not specify the design of the missing blankets and therefore did not permit seller to cure.¹⁵⁸ A buyer's notice stating that it rejected the seller's invoice for repair of goods was found insufficiently specific to satisfy article 39 (1) with respect to the failure of the seller to repair all defects.¹⁵⁹

18. Beyond the specificity requirement discussed above, CISG does not further define the contents of the notice required by article 39 (1). One court has stated that, so long as the notice precisely describes defects in the goods reported by the buyer's customer, the notice need not claim that such defects constitute a breach by the seller, and may even express doubts that the customer's complaints were justified.¹⁶⁰ On the other hand, another court has concluded that a buyer who merely requested the seller's assistance in addressing problems with computer software had not given notice of lack of conformity as required by article 39 (1);¹⁶¹ another decision stated that a telephone call which merely informed the seller that the goods had suffered damage was not sufficient article 39 notice because "it was not possible for [Seller] to understand the telephone call as a notification about a lack of conformity;"¹⁶² yet another decision declared that the notice must "contest the conformity of the goods" and demonstrate the buyer's "intention to object."¹⁶³

TIMELY NOTICE IN GENERAL

19. Where the parties have not agreed on a time for notice to be given,¹⁶⁴ article 39 (1) requires the buyer to give notice of lack of conformity within a reasonable time after he has discovered or ought to have discovered it. This limitation on the time in which notice must be given, it has been asserted, is to be determined on the basis of the interests of good business, so that neither side has an unfair advantage and the rapid settlement of disputes is promoted.¹⁶⁵ It has also been suggested that, in instalment contracts, requiring notice within a reasonable time prevents economically-wasteful subsequent deliveries of non-conforming goods. Framing the time for notice in terms of a reasonable time is designed to promote flexibility,¹⁶⁶ and the period depends on the facts of each case.¹⁶⁷ Several decisions have indicated that the reasonable time standard is a strict one.¹⁶⁸ Another decision, however, suggests that the determination of a reasonable time for notice must take into account the interests of both the buyer and the seller: "[R]egard must be had to the seller's interest not to be subject to non-conformity claims for an indefinite period of time after delivery. On the other hand, justified claims on the part of the buyer should not be excluded by erecting overly formalistic legal barriers. These interests must be given consideration when determining the meaning of 'reasonable'."¹⁶⁹ It has also been held that notice whose timing did not prevent the seller from having an opportunity to cure the lack of conformity is timely.¹⁷⁰ And it has been suggested that the requirement of notice within a reasonable time helps the seller preserve its ability to pursue claims against its own suppliers for a lack of conformity.¹⁷¹ The time for a buyer to give notice of lack of conformity under article 39 has been distinguished from the time within which he must give notice of the remedy (such as avoidance of contract) he is pursuing; a buyer's notice of remedy, it was suggested, need not be given until a reasonable time after

article 39 notice.¹⁷² A different decision, however, asserts that the reasonable time for giving notice of lack of conformity under article 39 (1) is the same as the reasonable time for giving notice of avoidance under article 49 (2) (b).¹⁷³ It has also been stated that, pursuant to article 27 CISG, it is sufficient to show that notice was dispatched in timely fashion.¹⁷⁴

WHEN TIME FOR NOTICE BEGINS TO RUN— RELATION TO ARTICLE 38

20. The reasonable time within which the buyer must give notice under article 39 (1) commences at the moment the buyer discovered or ought to have discovered the lack of conformity. Thus the period for the buyer's notice begins to run at the earlier of two moments: the time the buyer actually (or subjectively) discovered the non-conformity, and the time the buyer theoretically should have discovered (ought to have discovered) the non-conformity.¹⁷⁵ For example, a buyer's reasonable time for giving article 39 (1) notice that the goods were delivered on inadequate pallets was deemed to begin at the time of delivery where a representative of the buyer was at the site of delivery and should have discovered the inadequate pallets at that time, even though the buyer did not in fact learn of the lack of conformity until a later time.¹⁷⁶ And where a buyer employed an independent service to inspect the goods before they were loaded for shipment, and such inspection should have revealed the lack of conformity, the buyer's reasonable time for notice was deemed to begin at the time of such inspection.¹⁷⁷ On the other hand, where a buyer's proper article 38 examination did not reveal the presence of a latent or hidden lack of conformity, the buyer's reasonable time for giving notice under article 39 (1) did not begin to run until it actually learned of the non-conformity through customer complaints.¹⁷⁸ It has been held that the buyer's time for giving notice begins to run when it discovers or ought to have discovered the lack of conformity, even if the non-conformity had not at that time caused the buyer any damage;¹⁷⁹ on the other hand, where a lack of conformity arose from the fact that a used car had been initially registered at an earlier date than represented, it was held that the buyer's reasonable time for giving article 39 (1) notice did not begin to run until the buyer learned of its customer's reaction to this fact, even if the buyer should have known about the situation several months earlier.¹⁸⁰

21. The time when the buyer actually discovered the lack of conformity can be shown if the buyer admits the time at which it became subjectively aware of the defects¹⁸¹ or there are objective facts proving when the buyer acquired such knowledge.¹⁸² For example, documents of the buyer have been held to establish that it had discovered the lack of conformity immediately upon delivery.¹⁸³ Complaints that the buyer received from customers to whom the goods were resold may establish actual knowledge:¹⁸⁴ it has been found that the time for giving notice of lack of conformity commences, if it has not started previously, when the buyer receives such complaints,¹⁸⁵ even if the buyer doubts their accuracy.¹⁸⁶ On the other hand, it has been held that mere suspicion of a lack of conformity does not constitute discovery of a lack of conformity for purposes of commencing the reasonable time period for notice under article 39 (1).¹⁸⁷ More generally, one decision has declared: "The buyer has

discovered the non-conformity in terms of article 39 (1) CISG if such state of certainty is reached where a prudent buyer would be prompted to commence legal action. With particular regard to quantitative deviations, the required state of certainty exists as soon as the buyer becomes aware of the result of the quantity check.¹⁸⁸ On the other hand, it has been asserted that, for the buyer to actually discover a lack of conformity, it is not necessary that the lack of conformity have been ascertained by a court judgment or be undisputed: “[t]here need only be actual indications of deficiencies.”¹⁸⁹

22. As is noted in the discussion of article 38,¹⁹⁰ the time at which the buyer should have discovered a lack of conformity for purposes of article 39 (1) is closely connected to the buyer’s obligation under article 38 to examine the goods. In the case of a non-conformity that should reasonably have been discovered by the buyer upon the initial examination of the goods, the buyer’s time for giving notice begins to run from the time such examination should have been conducted.¹⁹¹ As one court stated, “[t]he point in time at which the buyer was obligated to have determined the breach of contract is governed by the provisions regulating the duty to examine. In this context, CISG article 38 provides that the goods must be examined within as short a period of time as the circumstances permit.”¹⁹² Thus in cases in which an initial examination following delivery should have revealed the lack of conformity, the buyer’s reasonable time for giving notice begins after the period for examining the goods under article 38 has run, and the deadline for buyer’s notice should accommodate both the period for examination under article 38 and a further reasonable time for notice under article 39 (1). Many decisions have recognized these two separate components of the time for the buyer’s notice of non-conformities,¹⁹³ although some decisions do not appear to acknowledge the distinction.¹⁹⁴ It has been stated that the reasonable time for the buyer’s notice does not begin to run until the buyer ought to have acquired knowledge, and not mere suspicion, of the lack of conformity.¹⁹⁵

23. In the case of latent or hidden defects not reasonably detectable in a proper article 38 examination following delivery,¹⁹⁶ the time when the buyer should discover the lack of conformity occurs later than the time for the initial examination of the goods immediately following delivery.¹⁹⁷ One decision raised the question whether the time for giving notice of latent defects should ever start before the buyer acquires actual knowledge of the defects, although the decision avoided resolving the issue.¹⁹⁸ Other decisions, however, have determined that the reasonable time for giving notice of latent defects commenced at a time when the buyer should have discovered the defects, whether or not the buyer had actual knowledge of the defects at that time.¹⁹⁹ Some decisions appear to recognize that the discovery of latent defects may be a process that occurs over a period of time, and have suggested that the buyer’s notice need only convey the information reasonably available to the buyer at the time of the notice, to be supplemented by information in later notices.²⁰⁰

PRESUMPTIVE PERIODS FOR NOTICE

24. Although the time period set in article 39 (1) for the buyer to give notice—within a reasonable time after the buyer discovers or ought to have discovered the

non-conformity—is designed to be flexible and will vary with the circumstances of the case,²⁰¹ a number of decisions have attempted to establish specific presumptive time periods as general guidelines or default rules.²⁰² Courts adopting this approach usually contemplate that the presumptive notice periods they put forward will be adjusted to reflect the facts of the particular case.²⁰³ The suggested presumptive periods vary considerably both in length and in the approach taken to measuring the period. Several decisions propose presumptive periods measured from the time goods are delivered, so that the periods encompass not only the time for giving notice after discovery of the lack of conformity, but also the time for the buyer to discover the non-conformity in the first place. In this vein, presumptive periods of eight days after delivery²⁰⁴ (including where the goods were durable and non-seasonal)²⁰⁵ 14 days for examination and notice,²⁰⁶ from two weeks to one month after delivery,²⁰⁷ one month after delivery,²⁰⁸ and six weeks after delivery²⁰⁹ have been suggested. Other decisions distinguish between the time for discovering the lack of conformity and the time for giving notice following discovery, often proposing presumptive periods for both components and frequently indicating particular categories of goods to which the period would apply. The following have been suggested as the presumptive reasonable time for giving notice: within a few days after the buyer discovered or ought to have discovered the lack of conformity;²¹⁰ one week²¹¹ (following one week for examination under article 38);²¹² eight days following discovery;²¹³ two weeks²¹⁴ (following one week for examination);²¹⁵ one month (following one week for examination).²¹⁶ A theory that in normal circumstances the reasonable time for giving notice is one month following the time the defect was or ought to have been discovered—sometimes referred to as the “noble month” approach—has been accepted in several decisions.²¹⁷ Where the goods are perishable, some decisions have suggested very short presumptive notice periods.²¹⁸ Though generally accepting the month-approach, a court held that once the buyer had in fact discovered the defect, he must give notice within two weeks at the latest.²¹⁹

FACTORS INFLUENCING REASONABLE TIME FOR NOTICE

25. It is clear that the reasonable time for notice will vary with the circumstances of the particular case.²²⁰ Decisions have identified a variety of factors that will impact the length of the notice period. A frequently cited factor relates to the obviousness of the lack of conformity—a patent, easily noticeable defect tends to shorten the period for notice.²²¹ The nature of the goods is another frequently-cited factor:²²² goods that are perishable²²³ or seasonal²²⁴ require earlier notice of defects; notice with respect to durable or non-seasonal goods, in contrast, is subject to a longer notice period,²²⁵ particularly if the goods are complex²²⁶ and require training and ongoing repairs.²²⁷ The buyer’s plans to process the goods²²⁸ or otherwise handle them in a fashion that might make it difficult to determine if the seller was responsible for a lack of conformity²²⁹ may also shorten the time for notice. Delay that defeated the purposes of article 39 (1) notice—specifically, delay that deprived the seller of the opportunity to check the factual basis of the buyer’s complaint and to remedy the alleged lack of conformity at minimal cost by repair

or replacement—has been held to render notice untimely.²³⁰ On the other hand, it has been suggested that a lack of conformity of a fraudulent character triggers an extended notice period.²³¹ It has also been asserted that the reasonable time for notice may vary depending on the remedy the buyer seeks, and that the notice period if the buyer wants to keep the goods and claim damages or a price reduction may be longer than where the buyer wishes to reject the goods.²³² Trade usages²³³ as well as practices established between the parties²³⁴ can also influence the time for notice, as can the buyer's awareness that the seller itself was operating under a deadline that would require prompt notice of defects.²³⁵ An expert or professional buyer has been found to be subject to a shorter period for notice.²³⁶ One court has stated that notice should have been given within as short a period as was practicable where quick notice was required for public health reasons—to permit the seller to take measures against the spread of a virus allegedly infecting the goods (fish eggs).²³⁷ The fact that the buyer asked for expedited delivery of the goods has been cited as a factor that shortens the time for giving notice of lack of conformity.²³⁸ On the other hand, the fact that the buyer had earlier “continuously advised” the seller of the worsening condition of a pony was cited by the court in finding that the buyer's notice given immediately after the “final diagnosis” of the pony's condition was timely.²³⁹

APPLICATION OF REASONABLE TIME STANDARD

26. It has been found that a buyer who did not give any notice of a lack of conformity before filing a claim against the seller had failed to meet the requirements for timely notice under article 39 (1), and had lost the right to rely on the lack of conformity.²⁴⁰ On the other hand, it has been suggested that, theoretically, a buyer's claim in arbitration, or a cross-claim filed in response to the seller's law suit to collect the purchase price of the goods, might constitute notice of lack of conformity under article 39 (1), although such notices were held to be untimely on the particular facts of the cases.²⁴¹ Even where the buyer did provide notice, the notice has been found too late in many instances. As measured from the date the goods were delivered, notices given at the following times have been found untimely on the facts of particular cases: over two years;²⁴² 24 months;²⁴³ at least 19 months;²⁴⁴ 18 months;²⁴⁵ one year;²⁴⁶ nine months;²⁴⁷ seven to eight months;²⁴⁸ seven months;²⁴⁹ six months;²⁵⁰ five months;²⁵¹ four months;²⁵² three and one-half months;²⁵³ three months;²⁵⁴ almost three months;²⁵⁵ more than two and one-half months;²⁵⁶ more than two months;²⁵⁷ two months;²⁵⁸ two months in the case of one delivery and approximately seven weeks in the case of another delivery;²⁵⁹ “several months”;²⁶⁰ seven weeks;²⁶¹ six weeks;²⁶² one and one-half months;²⁶³ more than one month;²⁶⁴ one month;²⁶⁵ 25 days;²⁶⁶ 24 days;²⁶⁷ 23 days;²⁶⁸ 21 days;²⁶⁹ 20 days;²⁷⁰ 19 days;²⁷¹ 16 days;²⁷² 15 days (perishables—fresh mushrooms);²⁷³ a little more than two weeks (fresh fruit);²⁷⁴ two weeks (foodstuffs);²⁷⁵ almost two weeks;²⁷⁶ 12 days;²⁷⁷ four days;²⁷⁸ any time beyond the day of delivery (involving perishable flowers).²⁷⁹ As measured from the date that the buyer discovered or ought to have discovered the lack of conformity, notices given at the following times have been found too late on the facts of particular cases: three years;²⁸⁰ more than 13 months;²⁸¹ 12 months;²⁸² 11 or 12 months;²⁸³ seven months;²⁸⁴ at least six

months;²⁸⁵ more than four months;²⁸⁶ almost four months;²⁸⁷ three months;²⁸⁸ more than two months;²⁸⁹ almost two months;²⁹⁰ one and one-half months;²⁹¹ seven weeks;²⁹² six weeks;²⁹³ 32 days;²⁹⁴ more than one month;²⁹⁵ one month;²⁹⁶ one month (by fax) and three weeks (by telephone);²⁹⁷ four weeks;²⁹⁸ three weeks;²⁹⁹ two weeks;³⁰⁰ 10 days;³⁰¹ eight days;³⁰² seven days.³⁰³ Notice given 20 months after the seller replaced one part of the goods, which did not cure the problem, and 11 months after the seller had demanded payment for the goods, has been held untimely.³⁰⁴ Where a buyer's notice that the seller's attempts to repair delivered goods had been unsuccessful came more than five months after the buyer's customers had informed the buyer of such failure, the court found that the notice was untimely under article 39 (1), and that the buyer had lost its right to rely on the ineffective repair.³⁰⁵

27. On the other hand, a number of decisions have found that the buyer gave notice in timely fashion. On the facts of particular cases, notices given at the following times have been found to be within the reasonable time mandated by article 39 (1): “immediately” after the buyer received complaints from its customers;³⁰⁶ the same day as the buyer discovered a latent or hidden lack of conformity;³⁰⁷ notice to the seller's in-country representative on the same day the buyer discovered the lack of conformity through customer complaints, and notice to the seller itself the next day;³⁰⁸ immediate telephone notice when the buyer received customer complaints, followed one-week later by an e-mail conveying laboratory test results;³⁰⁹ immediately after delivery of a machine, before assembly of the machine commenced;³¹⁰ one day after the goods were handed over to the buyer;³¹¹ within 24 hours (perishable goods);³¹² one day after the goods were examined;³¹³ within several days of delivery of perishable goods (tomatoes);³¹⁴ three days after delivery;³¹⁵ four days after delivery;³¹⁶ six days after discovery of defect;³¹⁷ seven days after the buyer learned of the defects;³¹⁸ within eight days after the goods were examined;³¹⁹ eight days after an expert's report identified defects in the goods;³²⁰ 11 days after delivery;³²¹ a series of notices, one given two weeks after an initial provisional test on the goods, another given a month after a second test, and final notices given six months after delivery of one machine and 11 months after delivery of another machine;³²² 19 days after delivery;³²³ 19–21 days after the examination of the goods;³²⁴ 20–25 days after delivery of livestock;³²⁵ three weeks after delivery;³²⁶ four weeks after the buyer should have known of the lack of conformity;³²⁷ within one month of delivery;³²⁸ within one month after the buyer discovered or ought to have discovered the lack of conformity;³²⁹ more than a month after delivery;³³⁰ one to two months after the buyer learned of the lack of conformity through customer complaints;³³¹ one month and three weeks after delivery of video screen apparatus;³³² two months after delivery, where the buyer examined the goods (frozen fish) in proper and timely fashion one month after delivery;³³³ two and one-half months after the buyer received the goods;³³⁴ six months after the non-conformity of goods was discovered;³³⁵ nine months after delivery (thus more than a year before the two-year period for notice under article 39 (2) expired).³³⁶ Where the goods (Christmas trees) were seasonal, and earlier notice would not have permitted the seller to effectively cure the lack of conformity, notice was therefore deemed timely.³³⁷

ARTICLE 39 (2)

28. Article 39 (2) establishes an absolute cut-off date for notice of lack of conformity—two years from the date the goods were actually handed over to the buyer, subject to an exception where such a time limit would be inconsistent with a contractual period of guarantee.³³⁸ The two-year period specified in article 39 (2), however, is not the equivalent of the reasonable time for notice specified in article 39 (1); it has been held that the two-year period for notice under article 39 (2) applies only when the article 39 (1) period is not shorter.³³⁹ Without the two-year limit for notice specified in article 39 (2), the time for notice might not have a clear end under the flexible and variable time standards in article 39 (1). In the case of latent defects, for example, the time the buyer discovers or ought to discover the lack of conformity, and thus the moment that the buyer's reasonable time for giving notice under article 39 (1) commences, could be long after the goods are delivered. In such cases, absent a contractual guarantee period that protects the buyer for a longer time (and subject to an exception if article 40 of the Convention applies),³⁴⁰ article 39 (2) will cut-off the buyer's right to give notice at two years after the goods were actually handed over, and thus prevent the buyer from preserving its rights to rely on a lack of conformity which is not discovered and noticed before that point, even if the lack of conformity could not reasonably have been discovered at that point.³⁴¹ Unlike the period for notice established in 39 (1), which is designed to be flexible and to vary with the circumstances, the two-year limit in article 39 (2) is precise and non-variable (except where the contractual period of guarantee exception applies). Indeed, even where the seller has attempted to repair a lack of conformity after the goods were delivered, it has been held that the two-year period runs from the time the goods were first actually handed over to the buyer, and not from the time of the seller's attempts to repair.³⁴² The apparent purpose of article 39 is to provide a specific, predictable period beyond which a seller can be confident that claims of a lack of conformity in the goods will not be legally cognizable.³⁴³

29. Decisions applying article 39 (2) have addressed several aspects of the provision. Thus several decisions have indicated that notice which is not specific enough to satisfy article 39 (1) will not constitute adequate notice under article 39 (2), even though the latter provision does not expressly incorporate the language in article 39 (1) requiring that the notice specify the nature of the lack of conformity.³⁴⁴ It has been held that notice given when the buyer began negotiations with the seller, within two years of delivery, to

resolve a dispute over the conformity of delivered goods was sufficient to satisfy the notice requirement of article 39 (2).³⁴⁵ Several other decisions have explored the relationship between article 39 (2) and rules specifying a deadline for commencing litigation based on breach of a sales contract (statutes of limitation or prescription periods). A number of decisions have attempted to reconcile a shorter limitations period in domestic law with the two-year notice period in article 39 (2): one decision held that, to avoid violating public international law, the shorter domestic limitations period should not be applied to cases where it would subject a claim to limitation before expiration of the two-year period for notice specified in article 39 (2);³⁴⁶ other decisions hold that the shorter domestic limitations period does not begin to run until the buyer gives the notice required by article 39 CISG.³⁴⁷ Other decisions were at pains to distinguish between the rule of article 39 (2), which establishes a deadline for giving notice of lack of conformity, and a statute of limitations or prescription period, which establishes deadlines for commencing litigation.³⁴⁸ A number of decisions have involved claims that the parties had derogated from article 39 (2) by agreement.³⁴⁹ Thus an arbitral tribunal found that the parties had derogated from article 39 (2) by agreeing to a maximum guarantee period of 18 months, although the tribunal also explained that the prescription period for a buyer who has given timely notice was not governed by article 39 (2), and was a matter beyond the scope of CISG to be subject to domestic law.³⁵⁰ On the other hand, an arbitral panel has determined that a clause requiring that disputes be submitted to arbitration within 30 days after the parties reached an impasse in negotiations did not operate as a derogation from article 39 (2).³⁵¹ Yet another arbitral decision found that the parties had not derogated from the two-year cut-off in article 39 (2) just because the seller may have orally represented to the buyer that the goods (sophisticated machinery) would last 30 years.³⁵² This decision presumably implies that such a representation does not constitute a contractual period of guarantee within the meaning of article 39 (2), because otherwise the clause would have extended the cut-off period for notice. Another decision also dealt with the meaning of the phrase contractual period of guarantee, finding that a clause fixing a deadline for submitting disputes to arbitration did not create such a contractual guarantee period.³⁵³ Where the buyer's claim for price reduction based on the non-conformity of delivered goods was cut-off by failure to give notice of the lack of conformity within the two years specified in article 39 (2), a court held that, for "equitable reasons," interest on the unpaid portion of the purchase price (article 78 of the Convention) should not begin to accrue until the expiration of the article 39 (2) period.³⁵⁴

Notes

¹ For example, CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; Amtsgericht Freiburg, Germany, 6 July 2007, English translation available on the Internet at www.cisg.law.pace.edu (stating that, pursuant to article 27 CISG, it is sufficient to show that notice was dispatched in timely fashion); Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision) (stating that, in light of articles 11, 29 and 7 (2) CISG, notice of lack of conformity may be given in any form), and that in light of article 27 CISG the notice need only be properly dispatched).

² See CLOUT case No. 720 [Netherlands Arbitration Institute, the Netherlands, 15 October 2002] (see full text of the decision) (holding that article 39 does not apply when the seller did not make delivery).

³ Landgericht Aschaffenburg, Germany, 20 April 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁴ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at www.cisg.law.pace.edu.

⁵ CLOUT case No. 237 [Arbitration Institute of the Stockholm Chamber of Commerce, Sweden, 5 June 1998].

⁶ CLOUT case No. 591 [Oberlandesgericht Düsseldorf, Germany, 28 May 2004] (see full text of the decision).

⁷ CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000] (see full text of the decision).

⁸ Hof van Beroep Ghent, Belgium, 14 November 2008 (Volmari Werner v. Isocab NV), English translation available on the Internet at www.cisg.law.pace.edu.

⁹ Hof van Beroep Antwerpen, Belgium, 14 April 2004 (ING Insurance v. BVBA HVA Koeling and Fagard Winand; HVA Koeling BVBA v. Fagard Winand and Besseling Agri-Technic BV), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁰ Landgericht Köln, Germany, 5 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Saarbrücken, Germany, 26 October 2004, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht München, Germany, 20 February 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993] (see full text of the decision); CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997]; Landgericht Landshut, Germany, 5 April 1995, Unilex. The article 39 notice requirement has also been applied, in a small number of cases, when the buyer complained that delivery was late. U.S. District Court, Eastern District of Kentucky, United States, 18 March 2008 (Sky Cast, Inc. v. Global Direct Distributions LLC), available on the Internet at www.cisg.law.pace.edu (applying article 39 “by analogy” where the seller delivered goods late); Amtsgericht Augsburg, Germany, 29 January 1996, Unilex (late delivery of seasonal goods). Note that the CISG provision governing time of delivery (article 33) is not found in the section of CISG entitled “Conformity of the goods and third party claims” (Section II of Part III, Chapter I), but rather is located in the section entitled “Delivery of the goods and handing over of documents” (Section I of Part III, Chapter II).

¹¹ Oberlandesgericht Rostock, Germany, 25 September 2002, English translation available on the Internet at www.cisg.law.pace.edu.

¹² CLOUT case No. 1510 [Cour de cassation, France, 27 November 2012]; CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; Obergericht des Kantons Appenzel Ausserrhoden, Switzerland, 18 August 2008, Unilex (see full text of the decision); Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 939 [Gerechtshof 's-Hertogenbosch, the Netherlands, 19 September 2006]; CLOUT case No. 944 [Gerechtshof 's-Hertogenbosch, the Netherlands, 11 October 2005] (see full text of the decision); CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004] (see full text of the decision); Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); Rechtbank van Koophandel Hasselt, Belgium, 6 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision); Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at www.cisg.law.pace.edu.

¹³ CLOUT case No. 944 [Gerechtshof 's-Hertogenbosch, the Netherlands, 11 October 2005] (see full text of the decision); CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004] (see full text of the decision); Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision); Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (see full text of the decision); Landgericht Landshut, Germany, 5 April 1995, Unilex; Landgericht Bielefeld, Germany, 18 January 1991, Unilex; CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], also available on the Internet at www.cisg.at; CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004].

¹⁴ CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995].

¹⁵ CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991]; CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997] (see full text of the decision), reversed on other grounds by CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998].

¹⁶ CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision); CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]. Compare also CLOUT case No. 46 [Landgericht Aachen, Germany, 3 April 1990] (finding that buyer had the right to reduce the price under article 50 because it had given proper notice of lack of conformity) (see full text of the decision).

¹⁷ CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998]; CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (see full text of the decision).

¹⁸ CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991].

¹⁹ Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at www.cisg.law.pace.edu.

²⁰ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision).

²¹ See the Digests for articles 40 and 44.

²² CLOUT case No. 1510 [Cour de cassation, France, 27 November 2012]; Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at www.cisg.law.pace.edu; District Court in Komarno, Slovakia, 12 March 2009, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Polimeles Protodikio Athinon, Greece, 2009 (docket No. 4505/2009), English editorial analysis available on the Internet at www.cisg.law.pace.edu; Handelsgericht Aargau, Switzerland, 26 November 2008,

English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 934 [Tribunal Cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision); Oberlandesgericht Köln, Germany, 12 January 2007, English translation available on the Internet at www.cisg.law.pace.edu; Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 909 [Kantonsgericht Appenzell-Ausserhoden, Switzerland, 9 March 2006] (see full text of the decision); Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (Steinbock-Bjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); Landgericht Bielefeld, Germany, 15 August 2003, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999]; CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998]; Pretura di Torino, Italy, 30 January 1997, Unilex, also available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995] (see full text of the decision); CLOUT case No. 97 [Handelsgericht des Kantons Zürich, Switzerland, 9 September 1993].

²³ Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; Amtsgericht Freiburg, Germany, 6 July 2007, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1406 [Commercial Court of Donetsk Region, Ukraine, 13 April 2007], English translation available on the Internet at www.cisg.law.pace.edu, reinstated in Supreme Court of Ukraine 11 December 2007, English translation available on the Internet at www.cisg.law.pace.edu (implying that the buyer bears the burden of proving that it gave the required notice of lack of conformity within the two-year period specific in article 39 (2)); Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision); Cour de Justice [Appellate Court] de Genève, Switzerland, 20 January 2006, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 748 [Oberster Gerichtshof, Austria, 24 May 2005]; Landgericht Bayreuth, Germany, 10 December 2004, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Tübingen, Germany, 18 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Rostock, Germany, 25 September 2002, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Schleswig, Germany, 22 August 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 538 [Oberlandesgericht Innsbruck, Austria, 26 April 2002]; Rechtbank 's-Gravenhage, the Netherlands, 7 June 1995, Unilex; Landgericht Marburg, Germany, 12 December 1995, Unilex; Landgericht Duisburg, Germany, 17 April 1996, Unilex; CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998]; CLOUT case No. 289 [Oberlandesgericht Stuttgart, Germany, 21 August 1995]; CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995], (see full text of the decision); CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994] (see full text of the decision); Arbitration Court of the International Chamber of Commerce, 1997 (Arbitral award No. 8611), Unilex; Arbitral Panel of the Zurich Chamber of Commerce, Switzerland, 31 May 1996 (Arbitral award No. ZHK 273/95), Unilex.

²⁴ District Court in Komarno, Slovakia, 12 March 2009, English translation available on the Internet at www.cisg.law.pace.edu; Pretura di Torino, Italy, 30 January 1997, Unilex, also available on the Internet at www.cisg.law.pace.edu.

²⁵ U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu (citing a German decision applying CISG for the proposition that the buyer bears the burden of proof under article 39); CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995] (see full text of the decision); CLOUT case No. 97 [Handelsgericht des Kantons Zürich Switzerland 9 September 1993].

²⁶ CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision) (holding that the principle “*onus probandi incumbit ei qui dicit*” [the party seeking to establish his rights must carry the burden of proof] is a general principle on which CISG is based under article 7 (2), and results in the buyer bearing the burden of proving it gave proper notice); CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000].

²⁷ Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu.

²⁸ CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision). Accord, Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, English translation available on the Internet at www.cisg.law.pace.edu.

²⁹ CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu.

³⁰ Amtsgericht Freiburg, Germany, 6 July 2007, English translation available on the Internet at www.cisg.law.pace.edu.

³¹ Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, English translation available on the Internet at www.cisg.law.pace.edu (requiring that notice by telephone be confirmed in writing within a reasonable time).

³² Oberlandesgericht Koblenz, Germany, 21 November 2007, English translation available on the Internet at www.cisg.law.pace.edu.

³³ Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998], in which the buyer had signed an order form containing a clause requiring complaints of defects in the goods to be in writing and made by certified letter. The decision proceeds on the premise that, if this clause became part of the parties' contract, the buyer's oral notice of lack of conformity would not have been valid. The court remanded the case to determine whether the clause had in fact been incorporated into the agreement.

³⁴ Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision). See also CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (In re Siskiyou Evergreen, Inc.)] (see full text of the decision) (notice not required to be in any particular form); Hof van Beroep Gent, Belgium, 28 January 2004 (J.B. and G.B. v. BV H.V.), English translation available on the Internet at www.cisg.law.pace.edu (notice “not bound by an specific formal requirements”); CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision).

³⁵ Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundes gericht, Switzerland, 7 July 2004] (see full text of the decision) (fax).

³⁶ CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht München, Germany, 29 November 2005, English translation available on the Internet at www.cisg.law.pace.edu (an e-mail in English); CLOUT case No. 1182 [Hoviokaus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu.

³⁷ CLOUT case No. 1133 [Federal Court of Australia, Australia, 13 August 2010] (*Cortem SpA v. Controlmatic Pty Ltd*), also available on the Internet at www.austlii.edu.au. Compare CLOUT case No. 798 [Audiencia Provincial Girona, Spain, 6 November 2006], where the court held that notice given when the buyer began negotiations with the seller to resolve the dispute over the conformity of delivered goods was sufficient to satisfy the notice requirement of article 39 (2).

³⁸ CLOUT case No. 1182 [Hoviokaus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu (notice by telephone that the buyer had received complaints about the goods from its customers, later followed by e-mails detailing laboratory test results); CLOUT case No. 225 [Cour d'appel, Versailles, France, 29 January 1998] (see full text of the decision). See also Cour d'appel Versailles, France, 13 October 2005, English translation available on the Internet at <http://cisgw3.law.pace.edu>, where the court took into account a series of communications from the buyer to the seller and its representative in determining that the seller was made aware of the lack of conformity.

³⁹ CLOUT case No. 992 [Retten i København, Denmark, 19 October 2007].

⁴⁰ Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁴¹ CLOUT case No. 1133 [Federal Court of Australia, Australia, 13 August 2010] (*Cortem SpA v. Controlmatic Pty Ltd*), also available on the Internet at www.austlii.edu.au.

⁴² CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003] (see full text of the decision) (stating that the Convention does not require buyer's notice to be in a particular form). But see Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, Serbia, 6 November 2005, English translation available on the Internet at www.cisg.law.pace.edu (indicating that, although the Convention does specify the form of notice, it implies that notice should be in written form); Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce in Belgrade, Serbia, 23 February 2004, English translation available on the Internet at www.cisg.law.pace.edu (same); Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, English translation available on the Internet at www.cisg.law.pace.edu (requiring that notice by telephone be confirmed in writing within a reasonable time). See also Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, 21 February 2005, English translation available on the Internet at www.cisg.law.pace.edu (avoiding question whether telephone notice was proper).

⁴³ District Court in Komarno, Slovakia, 24 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (see full text of the decision); CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision); CLOUT case No. 1182 [Hoviokaus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Hasselt, Belgium, 4 February 2004 District Court Hasselt (N S.p.A. v. S NV). English case outline available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision); Landgericht Frankfurt, Germany, 9 December 1992, Unilex. This is one of the decisions in which a particular telephonic notice was held to satisfy the notice requirement in fact. Another decision recognized the theoretical validity of telephone notice while finding on its particular facts that the requirements of article 39 had not been satisfied. Landgericht Frankfurt, Germany, 13 July 1994, Unilex. Some decisions have found that telephonic notice failed to satisfy article 39 in some respect (e.g., because it was given too late) without commenting on the form of the notice. CLOUT case No. 411 [Landgericht Bochum, Germany, 24 January 1996]; Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex. But see Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu> (requiring that notice by telephone be confirmed in writing within a reasonable time).

⁴⁴ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht Bayreuth, Germany, 10 December 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision); Landgericht Marburg, Germany, 12 December 1995, Unilex; Amtsgericht Kehl, Germany, 6 October 1995, Unilex; CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision). But see CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision) (holding that testimony by witnesses provided sufficient proof that the buyer had given telephonic notice). See generally Rechtbank van Koophandel Hasselt, Belgium, 4 February 2004 District Court Hasselt (N S.p.A. v. S NV). English case outline available on the Internet at www.cisg.law.pace.edu, stating that the buyer has the burden of proving that it gave notice by telephone).

⁴⁵ CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision); Landgericht Frankfurt, Germany, 13 July 1994, Unilex; CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision).

⁴⁶ Rechtbank van Koophandel Kortrijk, Belgium, 27 June 1997, Unilex. Compare Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, English translation available on the Internet at www.cisg.law.pace.edu (requiring that notice by telephone be confirmed in writing within a reasonable time).

⁴⁷ District Court in Komarno, Slovakia, 24 February 2009, English translation available on the Internet at www.cisg.law.pace.edu.

⁴⁸ Landgericht Aachen, Germany, 28 July 1993, Unilex, reversed on other grounds by Oberlandesgericht Köln, Germany, 22 February 1994, Unilex. See also CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994].

⁴⁹ Article 39 (1) requires the buyer to give notice "to the seller," and article 39 (2) states that the buyer must "give the seller notice." See Landgericht Bielefeld, Germany, 15 August 2003, English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁰ CLOUT case No. 220 [Kantonsgericht Nidwalden, Switzerland, 3 December 1997] (see full text of the decision).

⁵¹ Landgericht Bielefeld, Germany, 15 August 2003, English translation available on the Internet at www.cisg.law.pace.edu.

⁵² CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], see also Unilex. The court also noted that the notice must be specifically directed to the seller.

⁵³ CLOUT case No. 411 [Landgericht Bochum, Germany, 24 January 1996]. Compare CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision) (holding that the buyer had not satisfied the requirements of article 39 because it did not prove, *inter alia*, that the person to whom the buyer faxed notice had “reception competency in regard to the faxes”).

⁵⁴ CLOUT case No. 364 [Landgericht Köln, Germany 30 November 1999]. Another decision avoided determining whether notice sent to the seller’s agent met the requirements of article 39 because the alleged notice was insufficient on other grounds. Amtsgericht Freiburg, Germany, 6 July 2007, English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁵ Hoge Raad, the Netherlands, 4 February 2005, Unilex.

⁵⁶ Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu.

⁵⁷ See, for example, CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision).

⁵⁸ See, for example, CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu (contractual provision shortening the usual time for examining the goods and giving notice of lack of conformity); Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (term requiring buyer to give written notice of claimed defects within eight days of delivery (although seller was found to have waived its rights under this term) (see full text of the decision).

⁵⁹ Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 336 [Canton of Ticino Tribunale d’appello, Switzerland, 8 June 1999]; Landgericht Gießen, Germany, 5 July 1994, Unilex; Landgericht Hannover, Germany, 1 December 1993, Unilex; CLOUT case No. 303 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7331) (see full text of the decision); CLOUT case No. 94 [Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft—Wien, Austria, 15 June 1994]; CLOUT case No. 50 [Landgericht BadenBaden, Germany, 14 August 1991]. See also CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998] (remanding to determine whether contractual provision governing time for giving notice of defects had been complied with); but see Rechtbank Zwolle, the Netherlands, 5 March 1997, Unilex (the court notes that the seller’s standard term setting the time for giving notice of defects was part of the contract, but the court apparently did not apply the term; its analysis of whether the buyer gave notice within a reasonable time, however, was influenced by the term).

⁶⁰ CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision); CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (see full text of the decision).

⁶¹ Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision); CLOUT case No. 303 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7331)] (see full text of the decision).

⁶² CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision). Compare Rechtbank van Koophandel Mechelen, Belgium, 18 January 2002 (N.V. G. v. N.V. H.P.), Unilex (because seller’s terms, which required notice within 24 hours of delivery of perishable goods (tomatoes), were barely legible and in a language foreign to buyer, they were not deemed part of contract). In CLOUT case No. 222 [U.S. Court of Appeals (11th Circuit), United States, 29 June 1998] the court ruled that, although the parties had each signed a form with a provision requiring the buyer to give written notice of defects within 10 days of delivery, evidence showing the parties did not subjectively intend to be bound by the provision should have been admitted under CISG article 8 (1). One court has held that a term requiring the buyer to give notice of defects within 30 days of delivery bound the buyer because it had been incorporated into the contract under the rules of article 19 of CISG; see CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991] (see full text of the decision). Another court found that under article 18 (1) a buyer accepted terms on the seller’s order confirmation, including a clause requiring notice of defects to be given within eight days after delivery, by accepting delivery of the goods; see CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (see full text of the decision).

⁶³ CLOUT case No. 237 [Arbitration Institute of the Stockholm Chamber of Commerce, Sweden, 5 June 1998] (see full text of the decision).

⁶⁴ CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at www.cisg.law.pace.edu.

⁶⁵ CLOUT case No. 542 [Oberster Gerichtshof, Austria, 17 April 2002] (see full text of the decision).

⁶⁶ CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993]. On the facts of the particular case, the court found that the parties’ agreement to a clause requiring notice within eight days of delivery excluded the applicability of any such trade usage.

⁶⁷ CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision approving reasoning of lower appeals court).

⁶⁸ Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex.

⁶⁹ CLOUT case No. 828 [Gerechtshof ’s-Hertogenbosch, the Netherlands, 2 January 2007].

⁷⁰ CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (agreement requiring the buyer to give immediate notice of defects that arose after delivery of the goods did not govern the obligation to notify of defects existing at delivery; the latter was therefore regulated by article 39 (1)); Arbitration Court of the International Chamber of Commerce, 1997 (Arbitral award No. 8611), Unilex (because the parties’ agreement regarding notice of defects did not address, e.g., the specificity with which the notice must describe the claimed defect, the court supplemented the agreement by reference to article 39 (1)).

⁷¹ See, for example, CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu (indicating that a seller can waive its right to proper notice under article 39 (1), but that in the case before the court

the buyer had failed to allege and prove such a waiver); Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (Steinbock-Bjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu.

⁷² CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997]. See also CLOUT case No. 542 [Oberster Gerichtshof, Austria, 17 April 2002] (buyer argued seller had waived its right to object to late notice under article 39 (1) through a course of dealing in which seller had failed to object to the buyer's repeated untimely notice, although the court rejected the argument); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (approving holding of lower appeals court that seller had waived his right to object to timeliness of notice of defects under contract clause requiring notice within eight days of delivery when seller accepted the buyer's late notice and offered a remedy) (see full text of the decision).

⁷³ CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993]. The court indicated that waiver by the seller of its article 39 rights would only be deemed to occur in clear circumstances, as where the seller unconditionally accepted return of the goods by the buyer.

⁷⁴ CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998].

⁷⁵ CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998].

⁷⁶ Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (Steinbock-Bjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu.

⁷⁷ Landgericht Aschaffenburg, Germany, 20 April 2006, English translation available on the Internet at www.cisg.law.pace.edu.

⁷⁸ Bundesgericht, Switzerland, 26 March 2013, *Internationales Handelsrecht* 2014, 22 = CISG-online No. 2434.

⁷⁹ CLOUT case No. 94 [Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft–Wien, Austria, 15 June 1994]. According to the court, the buyer had relied on the impression that the seller would not object to late notice because the buyer refrained from taking immediate legal action against its customer or the seller.

⁸⁰ CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996].

⁸¹ CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000].

⁸² Arrondissementsrechtsbank Hof 's-Hertogenbosch, the Netherlands, 26 February 1992, Unilex.

⁸³ CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at <http://cisgw3.law.pace.edu> (to permit the seller to inspect the goods); CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (see full text of the decision); Oberster Gerichtshof, Austria, 30 November 2006, English translation available on the Internet at www.cisg.law.pace.edu (to minimize disputes over whether the condition of the goods had changed after delivery); CLOUT case No. 939 [Gerechtshof 's-Hertogenbosch, the Netherlands, 19 September 2006]; U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu (to avoid controversies over the condition of the goods at the time of transfer); Bundesgericht, Switzerland, 28 May 2002, English translation of excerpt available on the Internet at www.cisg.law.pace.edu (dicta—transaction governed by domestic law); CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], also available on the Internet at www.cisg.at; CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993] (see full text of the decision); CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997] (see full text of the decision); CLOUT case No. 3 [Landgericht München, Germany, 3 July 1989] (see full text of the decision).

⁸⁴ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006]; Oberster Gerichtshof, Austria, 30 November 2006, English translation available on the Internet at www.cisg.law.pace.edu (“to enable the parties to take appropriate measures”); CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996]; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision).

⁸⁵ Landgericht Aschaffenburg, Germany, 20 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (In re Siskiyou Evergreen, Inc.)] (see full text of the decision)] (“European cases construing the Convention have required the notice to describe the claimed non-conformity with enough detail to allow the seller to identify and correct the problem without further investigation. A more practical interpretation would hold that the notice must be given in time, and in sufficient detail, to allow the seller to cure the defect in a manner allowing the buyer the benefit of his bargain.”); Bundesgericht, Switzerland, 28 May 2002, English translation of excerpt available on the Internet at www.cisg.law.pace.edu (dicta—transaction governed by domestic law); CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998]; CLOUT case No. 3 [Landgericht München, Germany, 3 July 1989] (see full text of the decision). See also CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (implying that purpose of notice is to facilitate cure by the seller).

⁸⁶ Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at www.cisg.law.pace.edu. See also Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at www.cisg.law.pace.edu (to arrange for repair or replacement of the goods at minimal cost); Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu (to permit the seller to gather evidence); CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision) (“to put the seller in a position to understand the asserted lack of conformity and to take the necessary steps to gather any required evidence for possible future legal proceedings about the question of conformity, to initiate either a substitute delivery or a repair of the goods, and finally to take recourse against its own supplier”); Hoge Raad, the Netherlands, 4 February 2005, Unilex (to give the seller “a fair opportunity to remedy the defects and in general gather evidence on the alleged lack of conformity”).

⁸⁷ CLOUT case No. 939 [Gerechtshof 's-Hertogenbosch, the Netherlands, 19 September 2006].

⁸⁸ CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], see also Unilex.

⁸⁹ CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 849 [Audiencia Provincial de Pontevedra, Spain, 19 December 2007] (see full text of the decision)

(to minimize questions concerning the time the lack of conformity arose); CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], also available on the Internet at www.cisg.at.

⁹⁰Rechtbank Zwolle, 5 March 1997, the Netherlands, 1997, Unilex.

⁹¹CLOUT case No. 486 [Audiencia Provincial de La Coruña, Spain, 21 June 2002].

⁹²CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision).

⁹³Landgericht München, Germany, 29 November 2005, English translation available on the Internet at www.cisg.law.pace.edu.

⁹⁴CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006] (identify the lack of conformity exactly); CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004] (see full text of the decision) (“the buyer must describe the non-conformity as precisely as possible”); Landgericht Hannover, Germany, 1 December 1993, Unilex. Compare CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004] (stating that notice “must describe the non-conformity as precisely as possible”) (see full text of the decision). But see CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision) (indicating that the German translation of article 39 used by German-speaking courts requires greater precision than the official texts of CISG).

⁹⁵Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.

⁹⁶Hof van Beroep Gent, Belgium, 28 January 2004 (J.B. and G.B. v. BV H.V.), English translation available on the Internet at www.cisg.law.pace.edu.

⁹⁷CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (In re Siskiyou Evergreen, Inc.)] (see full text of the decision).

⁹⁸CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998] (see full text of the decision). See also Oberlandesgericht Koblenz, Germany, 21 November 2007, English translation available on the Internet at www.cisg.law.pace.edu (notice should make seller “aware of the nature and the scale of the lack of conformity”).

⁹⁹Landgericht München, Germany, 29 November 2005, English translation available on the Internet at www.cisg.law.pace.edu (“to enable the seller to react adequately”). Compare Hof van Beroep Gent, Belgium, 28 January 2004 (J.B. and G.B. v. BV H.V.), English translation available on the Internet at www.cisg.law.pace.edu (article 39 notice should be specific enough that it “should at least be possible to conclude that the goods purchased are riddled with certain defects or for some reason or another are not in conformity with the contract, so that the seller, for whom it should be clear that the buyer has complaints regarding the delivery, is able to make a judgment about the consequence it should reserve for the complaint. The notice must enable parties to decide if certain measures (possibly regarding the furnishing of proof) arise”).

¹⁰⁰Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998] (see full text of the decision). See also Oberlandesgericht Hamm, Germany, 2 April 2009, English headnotes available on the Internet at www.cisg.law.pace.edu (notice should be specific enough to permit the seller to “form an idea” of the lack of conformity and take “necessary steps”); CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision) (“to put the seller in a position to understand the asserted lack of conformity and to take the necessary steps to gather any required evidence for possible future legal proceedings about the question of conformity, to initiate either a substitute delivery or a repair of the goods, and finally to take recourse against its own supplier”); CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision) (notice should be precise enough to permit the seller to react by examining the goods and to cure the lack of conformity); CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003] (stating that buyer’s notice should permit the seller to react to the claim of lack of conformity in an appropriate fashion, and to choose among the several responses available to it, such as curing the lack of conformity, replacing the non-conforming goods, or demanding the opportunity to examine the goods himself) (see full text of the decision); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (approving approach of lower appeals court which had stated: “Notice must specify the nature of the lack of conformity adequately enough to put the seller in a position to be able to reasonably react to it”) (see full text of the decision).

¹⁰¹Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁰²CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (see full text of the decision). For similar statements, see CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (see full text of the decision) (sufficient information about the goods’ non-compliance with the contractually agreed qualities so that the seller can take all necessary steps to make up for the defect); Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999] (see full text of the decision); see also CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (implying that the purpose of the specificity requirement is to permit the seller to remedy the lack of conformity).

¹⁰³Ibid.

¹⁰⁴Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁰⁵See also CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999].

¹⁰⁶CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision).

¹⁰⁷CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>.

¹⁰⁸CLOUT case No. 1510 [Cour de cassation, France, 27 November 2012] (serial number of induction plates that would identify delivery date); CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999]; Arbitration Court of the International Chamber of Commerce, 1997 (Arbitral award No. 8611), Unilex; CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997]; Landgericht München, Germany, 20 March 1995, Unilex.

¹⁰⁹Landgericht Marburg, Germany, 12 December 1995, Unilex.

¹¹⁰ CLOUT case No. 597 [Oberlandesgericht Celle, Germany, 10 March 2004]; CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002]; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (see full text of the decision); Landgericht Bielefeld, Germany, 18 January 1991; CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], also available on the Internet at www.cisg.at.

¹¹¹ Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at <http://cisgw3.law.pace.edu> (buyer should specify which goods were missing from deliveries). See also Landgericht Köln, Germany, 5 December 2006, English translation available on the Internet at www.cisg.law.pace.edu, where the buyer's complaint that the seller had delivered huge excess quantities of the goods valued at €90,000 was held to be insufficiently specific.

¹¹² CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision). See also CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003].

¹¹³ CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision).

¹¹⁴ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu (indicating that the requirements regarding the content of the notice should not be "exaggerated"); Oberster Gerichtshof, Austria, 8 November 2005, English translation available on the Internet at www.cisg.law.pace.edu (same); Bundesgericht, Switzerland, 28 May 2002, English translation of excerpt available on the Internet at www.cisg.law.pace.edu (dicta—transaction governed by domestic law) ("The notice requirement is not supposed to burden the buyer with the risk of the defect. Therefore, the demands for a sufficient specification of the defect may not be set too high"); CLOUT case No. 538 [Oberlandesgericht Innsbruck, Austria, 26 April 2002] ("the requirements of the notice should not be too burdensome for the buyer"); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision) (stating that, after giving initial notice of lack of conformity the buyer need notify the seller of additional details only if they are discoverable within the examination period at reasonable cost); CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (see full text of the decision); CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998].

¹¹⁵ Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu. See also CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision) ("in the age of technology, the seller can be expected to ask questions if he desires more precise instructions from the buyer").

¹¹⁶ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998]; CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998] (see full text of the decision).

¹¹⁷ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision).

¹¹⁸ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (see full text of the decision); CLOUT case No. 905 [Kantonsgericht Wallis, Switzerland, 21 February 2005] (see full text of the decision); CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision); CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999]. See also CLOUT case No. 833 [Hoge Raad, the Netherlands, 20 February 1998] (implying that a description of symptoms rather than the causes of defects in floor tiles would be sufficient); Tribunale di Busto Arsizio, Italy, 13 December 2001, available in *Rivista di Diritto Internazionale Privato e Processuale*, 2003, 150–155, also available on Unilex (buyer was under no duty to indicate the specific cause of the malfunction in a machine, particularly where the seller could not provide the necessary information).

¹¹⁹ CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>.

¹²⁰ Oberlandesgericht Koblenz, Germany, 21 November 2007, English translation available on the Internet at www.cisg.law.pace.edu.

¹²¹ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (see full text of the decision).

¹²² Landgericht München, Germany, 29 November 2005, English translation available on the Internet at www.cisg.law.pace.edu.

¹²³ CLOUT case No. 905 [Kantonsgericht Wallis, Switzerland, 21 February 2005] (see full text of the decision).

¹²⁴ Oberlandesgericht Schleswig, Germany, 22 August 2002, English translation available on the Internet at www.cisg.law.pace.edu.

¹²⁵ Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu.

¹²⁶ CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999].

¹²⁷ CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999] (see full text of the decision).

¹²⁸ CLOUT case No. 833 [Hoge Raad, the Netherlands, 20 February 1998].

¹²⁹ CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003].

¹³⁰ Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu.

¹³¹ For other decisions holding that buyer's notice lacked sufficient specificity, see CLOUT case No. 337 [Landgericht Saarbrücken, Germany, 26 March 1996]; CLOUT case No. 336 [Canton of Ticino Tribunale d'appello, Switzerland, 8 June 1999]; Arbitration Court of the International Chamber of Commerce, 1997 (Arbitral award No. 8611); CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989] (see full text of the decision); CLOUT case No. 252 [Handelsgericht des Kantons Zürich, Switzerland, 21 September 1998] (see full text of the decision).

¹³² Oberster Gerichtshof, Austria, 8 May 2008, English translation available on the Internet at www.cisg.law.pace.edu.

¹³³ CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at www.cisg.law.pace.edu.

¹³⁴ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision) (dicta). See also Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at www.cisg.law.pace.edu (“A mere reference to inferior or poor quality is not sufficient”).

¹³⁵ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>.

¹³⁶ CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006].

¹³⁷ Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at www.cisg.law.pace.edu.

¹³⁸ Oberlandesgericht Düsseldorf, Germany, 23 January 2004, English translation available on the Internet at www.cisg.law.pace.edu.

¹³⁹ CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision).

¹⁴⁰ Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, 27 November 2002, English translation available on the Internet at www.cisg.law.pace.edu (requiring that notice by telephone be confirmed in writing within a reasonable time).

¹⁴¹ Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁴² Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁴³ CLOUT case No. 364 [Landgericht Köln, Germany, 30 November 1999].

¹⁴⁴ CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998].

¹⁴⁵ Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex.

¹⁴⁶ CLOUT case No. 220 [Kantonsgericht Nidwalden, Switzerland, 3 December 1997].

¹⁴⁷ CLOUT case No. 3 [Landgericht München, Germany, 3 July 1989].

¹⁴⁸ CLOUT case No. 98 [Rechtbank Roermond, the Netherlands, 19 December 1991].

¹⁴⁹ CLOUT case No. 339 [Landgericht Regensburg, Germany, 24 September 1998].

¹⁵⁰ Landgericht Marburg, Germany, 12 December 1995, Unilex.

¹⁵¹ CLOUT case No. 1510 [Cour de cassation, France, 27 November 2012];

¹⁵² CLOUT case No. 411 [Landgericht Bochum, Germany, 24 January 1996].

¹⁵³ Landgericht Hannover, Germany, 1 December 1993, Unilex.

¹⁵⁴ Landgericht München, Germany, 20 March 1995, Unilex.

¹⁵⁵ CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996].

¹⁵⁶ CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000].

¹⁵⁷ CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997] (see full text of the decision).

¹⁵⁸ CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997].

¹⁵⁹ Hof van Beroep Ghent, Belgium, 14 November 2008 (Volmari Werner v. Isocab NV), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁶⁰ CLOUT Case No. 833 [Hoge Raad, the Netherlands, 20 February 1998].

¹⁶¹ CLOUT case No. 131 [Landgericht München, Germany, 8 February 1995].

¹⁶² CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>.

¹⁶³ CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006].

¹⁶⁴ CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision).

¹⁶⁵ CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993] (see full text of the decision).

¹⁶⁶ Tribunale Civile di Cuneo, Italy, 31 January 1996, Unilex.

¹⁶⁷ United States District Court, Southern District of Ohio, United States, 26 March 2009 (Miami Valley Paper, LLC v. Lebbing Engineering & Consulting GmbH), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Tribunale di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision); CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (see full text of the decision); Tribunale Civile di Cuneo, Italy, 31 January 1996, Unilex; Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision); Landgericht Tübingen, Germany, 18 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993] (see full text of the decision); CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994] (see full text of the decision); CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003].

¹⁶⁸ Rechtbank van Koophandel Hasselt, Belgium, 20 September 2005 (J.M. Smithuis Pre Pain v. Bakkershuis), English translation available on the Internet at www.cisg.law.pace.edu (“The reasonable time of article 39 (1) is a short term”); Landgericht Tübingen, Germany, 18 June 2003,

English translation available on the Internet at www.cisg.law.pace.edu (“a common assumption that [the reasonable time for notice] should be short . . . a strict standard”); CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], also available on the Internet at www.cisg.at; CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993] (see full text of the decision); CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994] (see full text of the decision); CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (see full text of the decision). But see Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision) (“the CISG in general attempts to avoid too strict time limits”); CLOUT case No. 538 [Oberlandesgericht Innsbruck, Austria, 26 April 2002] (“the requirements of the notice should not be too burdensome for the buyer”).

¹⁶⁹ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>. See also Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision) (“it is not justified for the buyer to suffer from mistakes made by the seller by way of a reversal of the burden of proof caused by strict time limits for examination and notification”).

¹⁷⁰ CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (In re Siskiyou Evergreen, Inc.)] (see full text of the decision).

¹⁷¹ Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁷² CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision).

¹⁷³ CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995] (see full text of the decision). See also CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (distinguishing between late notice of lack of conformity under article 39 (1) and late notice of avoidance under article 49 (2) (b), but suggesting that the periods for both notices should be limited in the interest of promoting prompt clarification of the legal relationship between the parties) (see full text of the decision).

¹⁷⁴ Amtsgericht Freiburg, Germany, 6 July 2007, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 748 [Oberster Gerichtshof, Austria, 24 May 2005]; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision). See also Oberlandesgericht München, Germany, 17 November 2006, English translation available on the Internet at www.cisg.law.pace.edu (under article 27 CISG, the seller bore the risk of transmission of notice, and was obliged to inform the buyer of the seller’s change of address; thus the timeliness of the buyer’s notice was determined as of the time it was dispatched, and the fact that the seller never received the notice at its new location did not prevent the notice from being effective).

¹⁷⁵ For decisions in which the buyer’s notice was found to be too late because it should have discovered the defects before it in fact did, see, for example, CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 775 [Landgericht Frankfurt, Germany, 11 April 2005] (see full text of the decision); CLOUT case No. 634 [Landgericht Berlin, Germany 21 March 2003]; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000]; CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989]; CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 482 [Cour d’appel Paris, France, 6 November 2001].

¹⁷⁶ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu> (also holding that the buyer had a reasonable excuse for failure to give timely article 39 (1) because buyer was not informed of the lack of conformity by its expert until a later time).

¹⁷⁷ U.S. Court of Appeals (5th Circuit), United States, 11 June 2003 (BP Oil International v. Empresa Estatal Petroleos de Ecuador), available on the Internet at www.cisg.law.pace.edu.

¹⁷⁸ CLOUT case No. 1182 [Hoviokaus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu.

¹⁷⁹ CLOUT case No. 941 [Gerechthof Arnhem, the Netherlands, 18 July 2006]; Hof van Beroep Antwerpen, Belgium, 14 April 2004 (ING Insurance v. BVBA HVA Koeling and Fagard Winand; HVA Koeling BVBA v. Fagard Winand and Besseling AgriTechnic BV), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁸⁰ Landgericht Berlin, Germany, 13 September 2006, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁸¹ See Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Berlin, Germany, 16 September 1992, Unilex.

¹⁸² An example of such objective evidence can be found in Helsinki Court of First Instance, Finland, 11 June 1995, and Helsinki Court of Appeals, Finland, 30 June 1998, Unilex, where the buyer commissioned a chemical analysis of the goods which revealed their defects. See also CLOUT case No. 909 [Kantonsgericht Appenzell Auserhodens, Switzerland, 9 March 2006] (see full text of the decision) (buyer’s statements indicated he was present at delivery, when the damage to the goods occurred); CLOUT case No. 486 [Audiencia Provincial de La Coruña, Spain, 21 June 2002] (buyer of fish eggs who sent them to an expert for analysis should have known that they were infected with a virus, at the latest, by the end of the normal time for incubation and diagnosis of the virus).

¹⁸³ CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>.

¹⁸⁴ Oberlandesgericht Koblenz, Germany, 21 November 2007, English translation available on the Internet at www.cisg.law.pace.edu; Regional Court Zilina, Slovakia, 25 October 2007, English translation available on the Internet at www.cisg.law.pace.edu; Cour d’appel Versailles, France, 13 October 2005, English translation available on the Internet at www.cisg.law.pace.edu; Hoviokaus/hovrätt Turku, Finland, 24 May 2005, English translation available on the Internet at www.cisg.law.pace.edu; Hoge Raad, the Netherlands, 4 February 2005, Unilex; Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu.

¹⁸⁵ CLOUT case No. 210 [Audiencia Provincial Barcelona, Spain, 20 June 1997].

¹⁸⁶ CLOUT case No. 833 [Hoge Raad, the Netherlands, 20 February 1998].

¹⁸⁷ CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision).

¹⁸⁸ Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision).

¹⁸⁹ CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision).

¹⁹⁰ See the Digest for article 38, paragraph 2.

¹⁹¹ CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Tribunale di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at www.cisg.law.pace.edu; Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 802 [Tribunal Supremo, Spain, 17 January 2008] (see full text of the decision); CLOUT case No. 828 [Gerechtshof 's-Hertogenbosch, the Netherlands, 2 January 2007]; Landgericht Aschaffenburg, Germany, 20 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 944 [Gerechtshof 's-Hertogenbosch, the Netherlands, 11 October 2005] (see full text of the decision); CLOUT case No. 775 [Landgericht Frankfurt, Germany, 11 April 2005] (see full text of the decision); Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (Steinbock-Bjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Gent, Belgium, 16 June 2004 (Mermak Fleischhandelsgesellschaft mbH v. Cvba Lokere Vleesveiling), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision); U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision); Oberlandesgericht Düsseldorf, Germany, 23 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Hasselt, Belgium, 6 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision); Hof van Beroep Gent, Belgium, 8 October 2003, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Bielefeld, Germany, 15 August 2003, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Veurne, Belgium, 19 March 2003 (CVBA L. v. E.G. BV), English translation available on the Internet at www.cisg.law.pace.edu; Handelsgericht St. Gallen, Switzerland, 11 February 2003, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 484 [Audiencia Provincial de la Pontevedra, Spain, 3 October 2002]; Rechtbank van Koophandel Hasselt, Belgium, 6 March 2002 (Roelants Euro sprint v. Beltronic Engineering International), UNILEX; Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 997 [Sø og Handelsretten, Denmark, 31 January 2002]; CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 262 [Kanton St. Gallen, Gerichtskommission Oberrheinthal, Switzerland, 30 June 1995]; Pretura di Torino, Italy, 30 January 1997, Unilex, English translation available on the Internet at www.cisg.law.pace.edu; Arbitration Court of the International Chamber of Commerce, June 1996 (Arbitral award No. 8247), *International Court of Arbitration Bulletin* vol. 11, p. 53 (2000); CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995]; Arrondissementsrechtbank 's-Hertogenbosch, the Netherlands, 15 December 1997, Unilex; CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989]. Compare CLOUT case No. 1182 [Hoviokaus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu (because the article 38 examination conducted by the buyer, which was proper and in accordance with trade usage and practices established between the parties, did not reveal the lack of conformity, the buyer's reasonable time for giving article 39 (1) notice did not begin until the buyer learned of the lack of conformity through complaints from its customers); Hof van Beroep Antwerpen, Belgium, 14 February 2002 (NV Carta Mundi v. Index Syndicate Ltd), English translation available on the Internet at www.cisg.law.pace.edu (the buyer was justified in not examining the goods (thus delaying discovery of the lack of conformity) until the seller had made enough deliveries of glass game pieces to permit the assembly of full-game packages; the buyer's reasonable time for giving article 39 (1) notice did not begin to run until that point).

¹⁹² See the Digest for article 38.

¹⁹³ For example, CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at www.cisg.law.pace.edu; Tribunale di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 849 [Audiencia Provincial de Pontevedra, Spain, 19 December 2007] (see full text of the decision); Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (Steinbock-Bjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); Rechtbank van Koophandel Hasselt, Belgium, 6 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Gent, Belgium, 8 October 2003, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Handelsgericht St. Gallen, Switzerland, 11 February 2003, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); CLOUT case No. 484 [Audiencia Provincial de la Pontevedra, Spain, 3 October 2002]; Rechtbank van Koophandel Hasselt, Belgium, 6 March 2002 (Roelants Euro sprint v. Beltronic Engineering International), UNILEX; CLOUT case No. 634 [Landgericht Berlin, Germany 21 March 2003]; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (see full text of the decision); CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998]; CLOUT case No. 285 [Oberlandesgericht Koblenz, Germany, 11 September 1998]; Landgericht Düsseldorf, Germany, 23 June 1994, Unilex; Landgericht Mönchengladbach, Germany, May 22 1992, Unilex; Amtsgericht Riedlingen, Germany, 21 October 1994, Unilex.

¹⁹⁴ For example, Hof van Beroep Ghent, Belgium, 16 April 2007, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal commercial de Bruxelles, Belgium, 5 October 1994, Unilex; CLOUT case No. 256 [Tribunal cantonal du Valais, Switzerland,

29 June 1998] (concluding that notice given seven to eight months after delivery was too late, without distinguishing time for examination and discovery) (see full text of the decision).

¹⁹⁵ Tribunal di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu. Compare CLOUT case No. 1040 [Audiencia Provincial de Cuenca, Spain, 31 January 2005], English translation available on the Internet at www.cisg.law.pace.edu, holding that, even though the buyer had been informed of the results of a veterinarian's examination soon after livestock was delivered, the buyer's delay in giving article 39 notice that the livestock was in poor condition was "reasonable for the [Buyer] to be convinced of the actual sanitary condition of the animals."

¹⁹⁶ For the description of a latent defect, see CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision) (also stating that the buyer bears the burden of proving that a lack of conformity was hidden or latent). See also Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu (defect that was "immediately discernible by way of a simple test" that the buyer should have carried out was not a latent defect and did not extend the time for notice); Landgericht München, Germany, 27 February 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu> (buyer's reasonable time for giving article 39 (1) notice did not begin to run until it actually became aware of defects because it was under no duty to discover non-conformity—lack of basic electrical safety features—during its article 38 examination upon delivery).

¹⁹⁷ Regional Court Zilina, Slovakia, 25 October 2007, English translation available on the Internet at www.cisg.law.pace.edu; Hoviokeus/hovrätt Turku, Finland, 24 May 2005, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Hoge Raad, the Netherlands, 4 February 2005, Unilex; Cour d'appel de Poitiers, France, 26 October 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 773 [Bundesgerichtshof, Germany, 30 June 2004] (see full text of the decision); CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision); Landgericht München, Germany, 27 February 2002, English translation available on the Internet at www.cisg.law.pace.edu (buyer's reasonable time for giving article 39 (1) notice did not begin to run until it actually became aware of defects because it was under no duty to discover non-conformity—lack of basic electrical safety features—during its article 38 examination upon delivery); CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision approving approach of lower appeals court); Landgericht Paderborn, Germany, 25 June 1996, Unilex; Landgericht Ellwangen, Germany, 21 August 1995, Unilex; Helsinki Court of First Instance, Finland, 11 June 1995, and Helsinki Court of Appeals, Finland, 30 June 1998, Unilex. In the case of latent defects not reasonably discoverable in an initial examination, it is not clear whether the obligation to examine under article 38 remains relevant to determining when the buyer ought to have discovered the non-conformity; see the Digest for article 38 at paragraph 15.

¹⁹⁸ CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999].

¹⁹⁹ CLOUT case No. 944 [Gerechthof 's-Hertogenbosch, the Netherlands, 11 October 2005] (see full text of the decision); Cour d'appel de Poitiers, France, 26 October 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision) (reasonable time to give notice of a latent non-conformity commences "when a prudent buyer would take steps to examine the goods closer as well as take legal steps due to the existence of suspicious circumstances"); CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002] (see full text of the decision); CLOUT case No. 634 [Landgericht Berlin, Germany 21 March 2003]; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (even supposing that the defects could not have been discovered at delivery, the buyer should have discovered them at the latest when processing the goods, and should have given notice immediately thereafter; the buyer in fact waited until it received complaints from its own customer before notifying the seller); Landgericht Düsseldorf, Germany, 23 June 1994, Unilex.

²⁰⁰ CLOUT case No. 225, France, 1998; CLOUT case No. 833 [Hoge Raad, the Netherlands, 20 February 1998]; Tribunale di Busto Arsizio, Italy, 13 December 2001, available in *Rivista di Diritto Internazionale Privato e Processuale*, 2003, 150–155, also available on Unilex.

²⁰¹ See the discussion in paragraph 19 *supra*.

²⁰² For a survey of some of the presumptive notice periods that have been suggested, see Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision).

²⁰³ For example, CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Schleswig, Germany, 22 August 2002, English translation available on the Internet at www.cisg.law.pace.edu; Obergericht Luzern, Switzerland, 29 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003] (asserting that the time for giving notice varies with the circumstances of the case, but generally ranges from two weeks to one month) (see full text of the decision); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (approving approach of lower appeals court that has set a period of one week for notice as "a rough norm for orientation", resulting in a total presumptive period of 14 days for examining the goods and giving notice) (see full text of the decision); CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999], (suggesting a presumptive period of 14 days for examining the goods and giving notice "[i]nsofar as there are no specific circumstances militating in favour of a shorter or longer period"); CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997]; CLOUT case No. 164 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (see full text of the decision).

²⁰⁴ Obergericht Luzern, Switzerland, 29 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.

²⁰⁵ CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision).

²⁰⁶ CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision); CLOUT case No. 538 [Oberlandesgericht Innsbruck, Austria, 26 April 2002]; CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999].

²⁰⁷ CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003].

²⁰⁸ Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; Cour de Justice [Appellate Court] de Genève, Switzerland, 20 January 2006, English translation available on the Internet at www.cisg.law.pace.edu;

Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997]; CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision).

²⁰⁹ Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu.

²¹⁰ CLOUT case No. 941 [Gerechtshof Arnhem, the Netherlands, 18 July 2006]; Landgericht Tübingen, Germany, 18 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Landshut, Germany, 5 April 1993 Unilex database (presumptive time period for defects that are not hidden).

²¹¹ CLOUT case No. 909 [Kantonsgericht AppenzellAusserhoden, Switzerland, 9 March 2006] (see full text of the decision).

²¹² CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision); CLOUT case No. 541 [Oberster Gerichtshof, Austria, 14 January 2002] (see full text of the decision approving approach of lower appeals court); CLOUT case No. 285 [Oberlandesgericht Koblenz, Germany, 11 September 1998]; Landgericht Mönchengladbach, Germany, 22 May 1992. The latter case indicated that the presumptive periods it proposed applied where the goods were textiles.

²¹³ CLOUT case No. 280 [Oberlandesgericht Jena, Germany, 26 May 1998]; CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997], reversed on other grounds, CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998] (presumptive period applicable to nonperishable goods).

²¹⁴ Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu>.

²¹⁵ District Court in Nitra, Slovakia, 3 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 359 [Oberlandesgericht Koblenz, Germany, 18 November 1999] (applicable to case of obvious defects); CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (also proposing presumptive period of seven to 10 days for examination).

²¹⁶ CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision).

²¹⁷ Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (see full text of the decision); Rechtbank van Koophandel Hasselt, Belgium, 20 September 2005 (J.M. Smithuis Pre Pain v. Bakkershuis), English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Kiel, Germany, 27 July 2004, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (SteinbockBjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995]; CLOUT case No. 289 [Oberlandesgericht Stuttgart, Germany, 21 August 1995]; Amtsgericht Augsburg, Germany, 29 January 1996; CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999]. See also CLOUT case No. 164 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (suggesting acceptance of a notice period of approximately one month in general, but finding that facts of particular case required quicker notice) (see full text of the decision).

²¹⁸ CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision) (notice with respect to perishable goods due within 24 hours); Single Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu (“for consumables the reasonable period corresponds to a few days or sometimes even a few hours”); Oberlandesgericht Schleswig, Germany, 22 August 2002, English translation available on the Internet at www.cisg.law.pace.edu (notice of lack of conformity of live sheep gener ally due in three to four days after delivery); CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998] (in sales of fresh flowers, notice should be given on day of delivery); CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997] (see full text of the decision), reversed on other grounds CLOUT case No. 270 [Bundesgerichtshof, Germany, 25 November 1998] (asserting that notice of defects in perishable goods often due in a few hours). See also Amtsgericht Riedlingen, Germany, 21 October 1994, Unilex, where the court stated that the buyer should have examined ham within three days and given notice within further three days. Although the goods in that case were perishable, the court did not specifically mention this factor in setting out its time limits.

²¹⁹ Oberlandesgericht Brandenburg, Germany, 3 July 2014, *Internationales Handelsrecht* 2014, 228 = CISG-online No. 2543.

²²⁰ See paragraph 19 *supra*.

²²¹ Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 849 [Audiencia Provincial de Pontevedra, Spain, 19 December 2007] (see full text of the decision); CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision) (“the extent of the non-conformity”); U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Gent, Belgium, 12 May 2003 (S. GmbH v. A. bvba), English editorial remarks available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex; CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993] (see full text of the decision); CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997] (see full text of the decision); Landgericht Landshut, Germany, 5 April 1995, Unilex; Landgericht Berlin, Germany, 16 September 1992, Unilex; Amtsgericht Riedlingen, Germany, 21 October 1994, Unilex; Tribunale Civile di Cuneo, Italy, 31 January 1996, Unilex; Landgericht Berlin, Germany, 30 September 1993, Unilex. See also CLOUT case No. 776 [Juzgado Primero Civil de Primera Instancia de Lerma de Villada, Mexico, 3 October 2006] (equating the rule of article 39 (1) with a provision of Mexican domestic sales law that required a buyer to give written notice to the seller within five days after delivery if a lack of conformity was apparent, but which extended the notice period to 30 days if the lack of conformity was not apparent). Consideration of the obviousness of the defect may be more relevant to determining when the reasonable time for notice should commence (i.e., when the buyer ought to have discovered the lack of conformity) than to the question of the duration of the reasonable time.

²²²CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision); Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision) (“the nature of the goods and . . . their use”); CLOUT case No. 98 [Rechtbank Roermond, the Netherlands, 19 December 1991]; Pretura di Torino, Italy 30 January 1997, Unilex (referring to the “nature and value of the goods”), also available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000].

²²³Cour d’appel d’Aix-en-Provence, France, 24 May 2012, available in French at www.cisg-france.org (48-hour period agreed by the parties concerning a contract for lemons); Rechtbank Arnhem, the Netherlands, 11 February 2009, Unilex; CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 849 [Audiencia Provincial de Pontevedra, Spain, 19 December 2007] (see full text of the decision) (perishable goods intended for human consumption); Hof van Beroep Ghent, Belgium, 16 April 2007, English translation available on the Internet at www.cisg.law.pace.edu (frozen meat for human consumption); CLOUT case No. 828 [Gerechtshof ’s-Hertogenbosch, the Netherlands, 2 January 2007] (live trees); CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (see full text of the decision); CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision); Rechtbank van Koophandel Veurne, Belgium, 19 March 2003 (CVBA L. v. E.G. BV), English translation available on the Internet at www.cisg.law.pace.edu (fresh vegetables); Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu (“consumables”); CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision); CLOUT case No. 98 [Rechtbank Roermond, the Netherlands, 19 December 1991]; CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998]; CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000] (see full text of the decision). See also Rechtbank Zwolle, the Netherlands, 5 March 1997, Unilex (citing perishable nature of goods as factor mandating a short period for examination under article 38, which in turn meant that buyer’s notice was given beyond a reasonable time from when it should have discovered the defects); CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003] (dicta stating that perishability of the goods would shorten reasonable time for notice, although the goods in the case were not perishable).

²²⁴CLOUT case No. 1554 [Cour de cassation, France, 4 November 2014] – (?) although the court did not adjudicate on this point—appealing decision: Cour d’appel de Lyon, France, 18 October 2012, available in French at www.cisg-france.org (the reasonable time limit for perishable goods sold during the limited period of the Christmas festivities (Christmas trees) could extend over several days or even several weeks, but certainly not over two months); CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (see full text of the decision); Hof van Beroep Gent, Belgium, 12 May 2003 (S. GmbH v. A. bvba), English editorial remarks available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999]; Amtsgericht Augsburg, Germany, 29 January 1996, Unilex. Compare CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (In re Siskiyou Evergreen, Inc.)] (see full text of the decision) (where the goods (Christmas trees) were seasonal, and earlier notice would not have permitted the seller to effectively cure the lack of conformity, notice was deemed timely. since facilitating cure is the purpose of the article 39 notice requirement).

²²⁵District Court in Komarno, Slovakia 24 February 2009, English translation available on the Internet at www.cisg.law.pace.edu (because the goods—new potatoes—were not subject to rapid deterioration, the buyer had a longer time in which to give notice); Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht München, Germany, 27 February 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu> (video screen apparatus); CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision). See also CLOUT case No. 248 [Schweizerisches Bundesgericht, Switzerland, 28 October 1998] (noting that the appeals court did not review lower court’s decision that notice was timely because the goods consisted of frozen rather than fresh meat).

²²⁶Obergericht Luzern, Switzerland, 29 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.

²²⁷United States District Court, Southern District of Ohio, United States, 26 March 2009 (Miami Valley Paper, LLC v. Lebbing Engineering & Consulting GmbH), available on the Internet at www.cisg.law.pace.edu.

²²⁸CLOUT case No. 941 [Gerechtshof Arnhem, the Netherlands, 18 July 2006]; Arrondissementsrechtbank ’s-Hertogenbosch, the Netherlands, 15 December 1997, Unilex; Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex; see also Rechtbank Zwolle, the Netherlands, 5 March 1997, Unilex (citing buyer’s plans to process goods as factor mandating a short period for examination under article 38, which in turn meant that buyer’s notice was given beyond a reasonable time from when it should have discovered the defects).

²²⁹CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu; Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu (buyer arranged for inappropriate transportation that hastened the deterioration of perishable goods); Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997]. Compare Oberster Gerichtshof, Austria, 30 November 2006, English translation available on the Internet at www.cisg.law.pace.edu (a purpose of article 39 is to minimize disputes over whether the goods had changed condition after delivery).

²³⁰Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at www.cisg.law.pace.edu.

²³¹Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu.

²³²CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at <http://cisgw3.law.pace.edu>.

²³³CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision); Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex; Rechtbank Zwolle, the Netherlands, 5 March 1997, Unilex. See also CLOUT case No. 939 [Gerechtshof ’s-Hertogenbosch, the Netherlands, 19 September 2006] (court rejected the seller’s argument that the season in which the goods (live trees from a tree nursery) had been delivered should influence the reasonable time because “nothing indicated that the tree nurseries made any such distinction”).

²³⁴ CLOUT case No. 938 [Kantonsgericht Zug, Switzerland, 30 August 2007] (see full text of the decision); CLOUT case No. 939 [Gerechtshof 's-Hertogenbosch, the Netherlands, 19 September 2006] (applying the five-to-six day notice period established in past transactions between the parties); CLOUT case No. 164 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (see full text of the decision).

²³⁵ Landgericht Köln, Germany, 11 November 1993, Unilex.

²³⁶ United States District Court, Southern District of Ohio, United States, 26 March 2009 (Miami Valley Paper, LLC v. Lebbing Engineering & Consulting GmbH), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 941 [Gerechtshof Arnhem, the Netherlands, 18 July 2006]; Gerechtshof Arnhem, the Netherlands, 17 June 1997, Unilex; CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision).

²³⁷ CLOUT case No. 486 [Audiencia Provincial de La Coruña, Spain, 21 June 2002].

²³⁸ CLOUT case No. 634 [Landgericht Berlin, Germany 21 March 2003].

²³⁹ CLOUT case No. 992 [Retting i København, Denmark, 19 October 2007].

²⁴⁰ China International Economic and Trade Arbitration Commission, People's Republic of China, 12 March 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 219 [Tribunal cantonal du Valais, Switzerland, 28 October 1997] (see full text of the decision). See also CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999], where on disputed evidence the court concluded the buyer had not given the seller notice of lack of conformity.

²⁴¹ CLOUT case No. 1133 [Federal Court of Australia, Australia, 13 August 2010] (*Cortem SpA v. Controlmatic Pty Ltd*), also available on the Internet at www.austlii.edu.au; China International Economic & Trade Arbitration Commission, People's Republic of China, 21 October 2005, English translation available on the Internet at www.cisg.law.pace.edu. Compare CLOUT case No. 798 [Audiencia Provincial Girona, Spain, 6 November 2006], where the court held that notice given when the buyer began negotiations with the seller to resolve the dispute over the conformity of delivered goods was sufficient to satisfy the notice requirement of article 39 (2).

²⁴² CLOUT case No. 596 [Oberlandesgericht Zweibrücken, Germany, 2 February 2004] (see full text of the decision).

²⁴³ Landgericht Düsseldorf, Germany, 23 June 1994, Unilex.

²⁴⁴ Hof van Beroep Gent, Belgium, 28 January 2004 (J.B. and G.B. v. BV H.V.), English translation available on the Internet at www.cisg.law.pace.edu.

²⁴⁵ CLOUT case No. 1133 [Federal Court of Australia, Australia, 13 August 2010] (*Cortem SpA v. Controlmatic Pty Ltd*), also available on the Internet at www.austlii.edu.au.

²⁴⁶ CLOUT case No. 799 [Audiencia Provincial de Pontevedra, Spain, 8 February 2007]; CLOUT case No. 262 [Kanton St. Gallen, Gerichtskommission Oberrheintal, Switzerland 30 June 1995]; CLOUT case No. 263 [Bezirksgericht Unterrheintal, Switzerland, 16 September 1998].

²⁴⁷ Tribunal commercial de Bruxelles, Belgium, 5 October 1994, Unilex.

²⁴⁸ CLOUT case No. 256 [Tribunal cantonal du Valais, Switzerland, 29 June 1998].

²⁴⁹ CLOUT case No. 538 [Oberlandesgericht Innsbruck, Austria, 26 April 2002].

²⁵⁰ CLOUT case No. 1203 [Rechtbank Breda, the Netherlands, 16 January 2009], English translation available on the Internet at www.cisg.law.pace.edu (perishable goods); CLOUT case No. 1231 [Oberlandesgericht Köln, Germany, 19 May 2008], English translation available on the Internet at www.cisg.law.pace.edu (pesticides); CLOUT case No. 608 [Tribunale Rimini, Italy, 26 November 2002] (see full text of the decision).

²⁵¹ Rechtbank van Koophandel Hasselt, Belgium, 6 March 2002 (Roelants Eurosprint v. Beltronic Engineering International), Unilex.

²⁵² Obergericht Zug, Switzerland, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu (four months after the seller completed installation of the goods); CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (see full text of the decision); CLOUT case No. 378 [Tribunale di Vigevano, Italy, 12 July 2000].

²⁵³ CLOUT case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 January 1997]; Landgericht Berlin, Germany, 16 September 1992, Unilex.

²⁵⁴ Hof van Beroep Gent, Belgium, 12 May 2003 (S. GmbH v. A. bvba), English editorial remarks available on the Internet at www.cisg.law.pace.edu; Handelsgericht St. Gallen, Switzerland, 11 February 2003, English translation available on the Internet at www.cisg.law.pace.edu (where buyer should have discovered the defects within a few days after delivery); Hof Arnhem, the Netherlands, 17 June 1997, Unilex; Rechtbank van Koophandel Kortrijk, Belgium, 27 June 1997, Unilex; CLOUT case No. 167 [Oberlandesgericht München, Germany, 8 February 1995].

²⁵⁵ Hof von Beroep Gent, Belgium, 2 December 2002 (B.V.B.A. A.S. v. GmbH P.C.), English Case Outline available on the Internet at www.cisg.law.pace.edu.

²⁵⁶ Oberlandesgericht München, Germany, 13 November 2002, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993].

²⁵⁷ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu> (also holding that the buyer had a reasonable excuse for failure to give timely article 39 (1) because buyer was not informed of the lack of conformity by its expert until a later time).

²⁵⁸ Judicial Board of Szeged, Hungary, 5 December 2008, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Hasselt, Belgium, 6 March 2002 (Roelants Eurosprint v. Beltronic Engineering International), UNILEX; Rechtbank van Koophandel Kortrijk, Belgium, 16 December 1996, Unilex; CLOUT case No. 81 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994].

²⁵⁹ CLOUT case No. 423 [Oberster Gerichtshof, Austria, 27 August 1999].

- ²⁶⁰ Landgericht München, Germany, 20 February 2002, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁶¹ CLOUT case No. 634 [Landgericht Berlin, Germany 21 March 2003].
- ²⁶² Amtsgericht Kehl, Germany, 6 October 1995, Unilex.
- ²⁶³ Obergericht Luzern, Switzerland, 29 July 2002, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁶⁴ Landgericht Köln, Germany, 5 December 2006, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁶⁵ CLOUT case No. 828 [Gerechthof 's-Hertogenbosch, the Netherlands, 2 January 2007], see also Unilex (perishable goods—live trees; stating that notice given anytime more than six days after delivery would have been untimely); Landgericht Mönchengladbach, Germany, 22 May 1992, Unilex.
- ²⁶⁶ CLOUT case No. 359 [Oberlandesgericht Koblenz, Germany, 18 November 1999]; CLOUT case No. 310 [Oberlandesgericht Düsseldorf, Germany, 12 March 1993].
- ²⁶⁷ CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997].
- ²⁶⁸ Tribunale Civile di Cuneo, Italy, 31 January 1996, Unilex.
- ²⁶⁹ CLOUT case No. 285 [Oberlandesgericht Koblenz, Germany, 11 September 1998]; Landgericht Köln, Germany, 11 November 1993, Unilex, reversed on grounds that CISG was inapplicable by CLOUT case No. 122 [Oberlandesgericht Köln, Germany, 26 August 1994].
- ²⁷⁰ Amtsgericht Riedlingen, Germany, 21 October 1994, Unilex; Landgericht Berlin, Germany, 16 September, 1992, Unilex.
- ²⁷¹ Landgericht Landshut, Germany, 5 April 1995, Unilex.
- ²⁷² CLOUT case No. 4 [Landgericht Stuttgart, Germany, 31 August 1989].
- ²⁷³ Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 27 November 2002, 27 November 2002, English translation available on the Internet at www.cisg.law.pace.edu (requiring that notice by telephone be confirmed in writing within a reasonable time).
- ²⁷⁴ Rechtbank van Koophandel Veurne, Belgium, 19 March 2003 (CVBA L. v. E.G. BV), English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁷⁵ Hof van Beroep Ghent, Belgium, 16 April 2007, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁷⁶ CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997] (see full text of the decision).
- ²⁷⁷ Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu (perishable goods (fruit) with easily discoverable defects).
- ²⁷⁸ Arrondissementsrechtbank Zutphen, the Netherlands, 27 February 2008 (Frutas Caminito Sociedad Cooperativa Valenciana. v. Groente-En Fruithandel Heemskerk BV), English abstract available on the Internet at www.cisg.law.pace.edu (buyer arranged improper mode of transportation that would hasten the deterioration of perishable goods); Oberlandesgericht Schleswig, Germany, 22 August 2002, English translation available on the Internet at www.cisg.law.pace.edu (sheep warranted to be ready for slaughter, subject to rapid change in relevant condition).
- ²⁷⁹ CLOUT case No. 290 [Oberlandesgericht Saarbrücken, Germany, 3 June 1998].
- ²⁸⁰ Supreme Court, Israel 17 March 2009 (*Pamesa Cerámica v. Yisrael Mendelson Ltd*), available on the Internet at <http://cisgw3.law.pace.edu>.
- ²⁸¹ Tribunale di Forlì, Italy, 16 February 2009, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁸² Hof van Beroep Antwerpen, Belgium, 14 April 2004 (ING Insurance v. BVBA HVA Koeling and Fagard Winand; HVA Koeling BVBA v. Fagard Winand and Besseling Agri-Technic BV), English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁸³ Cour d'appel de Poitiers, France, 26 October 2004, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁸⁴ CLOUT case No.597 [Oberlandesgericht Celle, Germany, 10 March 2004] (see full text of the decision); Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 997 [Sø og Handelsretten, Denmark, 31 January 2002] (frozen mackerel); Pretura di Torino, Italy 30 January 1997, Unilex, also available on the Internet at www.cisg.law.pace.edu.
- ²⁸⁵ Landgericht Aschaffenburg, Germany, 20 April 2006, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 30 April 2003, English translation available on the Internet at <http://cisgw3.law.pace.edu>.
- ²⁸⁶ CLOUT case No. 1057 [Oberster Gerichtshof, Austria, 2 April 2009], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Oberlandesgericht Linz, Austria, 1 June 2005, English translation available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Gent, Belgium, 8 October 2003, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁸⁷ CLOUT case No. 833 [Hoge Raad, the Netherlands, 20 February 1998].
- ²⁸⁸ Landgericht Stuttgart, Germany, 15 October 2009, English translation available on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, 21 February 2005, English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁸⁹ CLOUT case No. 1236 [Oberlandesgericht Saarbrücken, Germany, 17 January 2007], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Landgericht Hamburg, Germany, 6 September 2004, English translation available on the Internet at <http://cisgw3.law.pace.edu>; CLOUT case No. 773 [Bundesgerichtshof, Germany, 30 June 2004] (see full text of the decision); Landgericht Berlin, Germany, 16 September, 1992, Unilex.
- ²⁹⁰ Hof van Beroep Ghent, Belgium, 16 June 2004 (Mermark Fleischhandelsgesellschaft mbH v. Cvba Lokerse Vleesveiling), English translation available on the Internet at www.cisg.law.pace.edu.
- ²⁹¹ CLOUT case No. 941 [Gerechthof Arnem, the Netherlands, 18 July 2006].

²⁹² Rechtbank van Koophandel Kortrijk, Belgium, 4 June 2004 (SteinbockBjonustan EHF v. N.V. Duma), English translation available on the Internet at www.cisg.law.pace.edu.

²⁹³ Oberlandesgericht Hamm, Germany, 2 April 2009, English headnotes available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Hasselt, Belgium, 6 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (see full text of the decision).

²⁹⁴ CLOUT case No. 164 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 5 December 1995] (see full text of the decision).

²⁹⁵ Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 486 [Audiencia Provincial de La Coruña, Spain, 21 June 2002] (involving special circumstances requiring that notice be given as soon as was practicable).

²⁹⁶ CLOUT case No. 849 [Audiencia Provincial de Pontevedra, Spain, 19 December 2007] (see full text of the decision).

²⁹⁷ Arbitration Court of the International Chamber of Commerce, 1996 (Arbitral award No. 8247), Unilex.

²⁹⁸ CLOUT case No. 280 [Oberlandesgericht Jena, Germany, 26 May 1998]; CLOUT case No. 196 [Handelsgericht des Kantons Zürich, Switzerland, 26 April 1995] (see full text of the decision).

²⁹⁹ CLOUT case No. 775 [Landgericht Frankfurt, Germany, 11 April 2005] (see full text of the decision); Arrondissementsrechtbank 's-Hertogenbosch, the Netherlands, 15 December 1997, Unilex.

³⁰⁰ District Court in Nitra, Slovakia, 3 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 230 [Oberlandesgericht Karlsruhe, Germany, 25 June 1997].

³⁰¹ CLOUT case No. 909 [Kantonsgericht Appenzell-Ausserhoden, Switzerland, 9 March 2006] (see full text of the decision); U.S. District Court, Northern District of Illinois, United States, 21 May 2004 (Chicago Prime Packers, Inc. v. Northam Food Trading Co.), available on the Internet at www.cisg.law.pace.edu (frozen pork ribs for human consumption).

³⁰² Landgericht Tübingen, Germany, 18 June 2003, English translation available on the Internet at www.cisg.law.pace.edu.

³⁰³ CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]. Several other decisions have found that the buyer's notice was untimely, although the precise time of the buyer's notice is not clear. In this respect see CLOUT case No. 210 [Audiencia Provincial Barcelona, Spain, 20 June 1997]; CLOUT case No. 339 [Landgericht Regensburg, Germany, 24 September 1998]; CLOUT case No. 56 [Canton of Ticino Pretore di Locarno Campagna, Switzerland, 27 April 1992]; Rechtbank Zwolle, the Netherlands, 5 March 1997, Unilex.

³⁰⁴ CLOUT case No. 1038 [Audiencia Provincial de Valencia, Spain, 8 April 2008].

³⁰⁵ Hof van Beroep Ghent, Belgium, 14 November 2008 (Volmari Werner v. Isocab NV), English translation available on the Internet at www.cisg.law.pace.edu.

³⁰⁶ Oberlandesgericht Koblenz, Germany, 21 November 2007, English translation available on the Internet at www.cisg.law.pace.edu.

³⁰⁷ CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004] (see full text of the decision).

³⁰⁸ Cour d'appel Versailles, France, 13 October 2005, English translation available on the Internet at www.cisg.law.pace.edu.

³⁰⁹ CLOUT case No. 1182 [Hoviokeus/hovrätt Turku, Finland, 24 May 2005], English translation available on the Internet at www.cisg.law.pace.edu.

³¹⁰ CLOUT case No. 905 [Kantonsgericht Wallis, Switzerland, 21 February 2005] (see full text of the decision).

³¹¹ CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996] (see full text of the decision).

³¹² CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006] (see full text of the decision).

³¹³ District Court in Komarno, Slovakia 24 February 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 46 [Landgericht Aachen, Germany, 3 April 1990] (see full text of the decision).

³¹⁴ Rechtbank van Koophandel Mechelen, Belgium, 18 January 2002, Unilex.

³¹⁵ Landgericht Bielefeld, Germany, 18 January 1991, Unilex.

³¹⁶ Landgericht Coburg, Germany, 12 December 2006, English translation available on the Internet at www.cisg.law.pace.edu.

³¹⁷ CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (see full text of the decision) (tee shirts); Hoviokeus/hovrätt Helsinki, Finland, 31 May 2004 (Crudex Chemicals Oy v. Landmark Chemicals S.A.), English editorial analysis available on the Internet at www.cisg.law.pace.edu.

³¹⁸ CLOUT case No. 867 [Tribunale di Forlì, Italy, 11 December 2008], English translation available on the Internet at <http://cisgw3.law.pace.edu>; Appellationshof Bern, Switzerland, 11 February 2004, English translation available on the Internet at www.cisg.law.pace.edu, reasoning upheld in CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004] (see full text of the decision); Helsinki Court of First Instance, Finland, 11 June 1995, and Helsinki Court of Appeals, Finland, 30 June 1998, available on the Internet at www.cisg.law.pace.edu.

³¹⁹ CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994] (noting that buyer examined goods at the beginning of July and gave notice on or before 8 July, which the court held was timely, particularly in light of fact that 4 and 5 July were weekend days).

³²⁰ CLOUT case No. 45 [Arbitration Court of the International Chamber of Commerce, 1989 (Arbitral award No. 5713)] (see full text of the decision).

³²¹ CLOUT case No. 593 [Oberlandesgericht Karlsruhe, Germany, 6 March 2003].

³²² CLOUT case No. 225 [Cour d'appel, Versailles, France, 29 January 1998] (see full text of the decision); see also Tribunale di Busto Arsizio, Italy, 13 December 2001, available in *Rivista di Diritto Internazionale Privato e Processuale*, 2003, 150–155, also available on Unilex (notice made immediately after installation of machinery reasonable, followed by subsequent notices regarding further discoveries made by the buyer).

- ³²³ Landgericht Frankfurt, Germany, 9 December 1992, Unilex.
- ³²⁴ CLOUT case No. 315 [Cour de cassation, France, 26 May 1999] (see full text of the decision).
- ³²⁵ CLOUT case No. 1040 [Audiencia Provincial de Cuenca, Spain, 31 January 2005], English translation available on the Internet at www.cisg.law.pace.edu.
- ³²⁶ CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004] (see full text of the decision).
- ³²⁷ Oberlandesgericht Düsseldorf, Germany, 23 January 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 319 [Bundesgerichtshof, Germany, 3 November 1999].
- ³²⁸ CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision); CLOUT case No. 202 [Cour d'appel, Grenoble, France, 13 September 1995]. Several other decisions have found that the buyer's notice was timely, although the precise period found reasonable by the court is not clear; see CLOUT case No. 98 [Rechtbank Roermond, the Netherlands 19 December 1991]; Landgericht Paderborn, Germany, 25 June 1996, Unilex.
- ³²⁹ Handelsgericht Aargau, Switzerland, 26 November 2008, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 885 [Bundesgericht, Switzerland, 13 November 2003] (see full text of the decision).
- ³³⁰ U.S. District Court, Southern District of New York, United States, 23 August 2006 (*TeeVee Tunes v. Gerhard Schubert GmbH*), available on the Internet at www.cisg.law.pace.edu.
- ³³¹ Regional Court Zilina, Slovakia, 25 October 2007, English translation available on the Internet at www.cisg.law.pace.edu (decision indicates that buyer received customer complaints in August and September, and notified seller of the lack of conformity in October).
- ³³² Landgericht München, Germany, 27 February 2002, English translation available on the Internet at www.cisg.law.pace.edu.
- ³³³ CLOUT case No. 484 [Audiencia Provincial de Pontevedra, Spain, 3 October 2002].
- ³³⁴ Single-Member Court of First Instance of Thessalonika, Greece, 2003 (docket No. 14953/2003), English editorial remarks available on the Internet at www.cisg.law.pace.edu.
- ³³⁵ High People's Court of Fujian Province, People's Republic of China, 20 December 2014 (*Cugranca Safety SL v Fujian Quanzhou Dongba Shoes & Clothes Ltd*), (2014) *Min Min Zhong Zi* No. 1454 Civil Judgment (holding that giving notice more than .seven months after delivery, or six months after actual discovery of the non-conformity of the goods, was not untimely considering "the many countries and stages international goods have travelled through"), available on the Internet at www.ccmt.org.cn.
- ³³⁶ China International Economic & Trade Arbitration Commission, People's Republic of China, 3 June 2003, English translation available on the Internet at www.cisg.law.pace.edu.
- ³³⁷ CLOUT case No. 694 [U.S. Bankruptcy Court, District of Oregon, United States, 29 March 2004 (*In re Siskiyou Evergreen, Inc.*)] (see full text of the decision).
- ³³⁸ The buyer's obligation to give notice under article 39 (2) is also subject to article 40, which prevents the seller from invoking article 39 "if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer."
- ³³⁹ CLOUT case No. 799 [Audiencia Provincial de Pontevedra, Spain, 8 February 2007].
- ³⁴⁰ See, for example, Cour d'appel de Rouen, France, 19 December 2006 (*Société Agricole v. Société SIAC*), English translation available on the Internet at www.cisg.law.pace.edu, affirmed by CLOUT case No. 1028 [Cour de cassation, France, 16, Sep tember 2008] (holding that the requirements of article 40 were not satisfied on the facts of the case). See generally the Digest for article 40.
- ³⁴¹ See CLOUT case No. 1133 [Federal Court of Australia, Australia, 13 August 2010] (*Cortem SpA v. Controlmatic Pty. Ltd*), also available on the Internet at www.austlii.edu.au; CLOUT case No. 1026 [Cour de cassation, France, 8 April 2009] (*Société Bati-Seul v. Société Ceram-iche Marca Corona*), English translation available on the Internet at www.cisg.law.pace.edu; Supreme Court, Israel 17 March 2009 (*Pamesa Cerámica v. Yisrael Mendelson Ltd*), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1058 [Oberster Gerichtshof, Austria, 19 December 2007], English translation available on the Internet at www.cisg.law.pace.edu (holding that there is no "gap" in article 39 (2) regarding the treatment of latent defects); Cour d'appel de Rouen, France, 19 December 2006, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Stuttgart, Germany, 20 December 2004, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Marburg, Germany, 12 December 1995, Unilex (invoking article 39 (2) to deny the buyer any remedy for a claimed lack of conformity).
- ³⁴² CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision).
- ³⁴³ CLOUT case No. 1058 [See Oberster Gerichtshof, Austria, 19 December 2007], English translation available on the Internet at www.cisg.law.pace.edu.
- ³⁴⁴ CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007] (see full text of the decision); CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998]; Landgericht Marburg, Germany, 12 December 1995, Unilex. Both of these cases held that, because the notice given by the buyer was not specific enough to satisfy article 39 (1), the two-year period in article 39 (2) had elapsed before proper notice was given. Neither court, apparently, considered the possibility that the buyer's notice might have been sufficient to satisfy article 39 (2) even though it did not comply with the specificity requirement in article 39 (1).
- ³⁴⁵ CLOUT case No. 798 [Audiencia Provincial Girona, Spain, 6 November 2006].
- ³⁴⁶ Bundesgericht, Switzerland, 18 May 2009, English translation available on the Internet at www.cisg.law.pace.edu. An earlier decision had chosen to extend the domestic limitations period to two years in such cases. CLOUT case No. 249 [Cour de Justice, Genève, Switzerland, 10 October 1997].
- ³⁴⁷ Single-Member Court of First Instance Larissa, Greece, 2005 (docket No. 165/2005), English editorial analysis available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002], see full text of the decision.
- ³⁴⁸ CLOUT case No. 1507 [Cour d'appel de Colmar, France, 6 November 2013]; Cour d'appel de Rouen, France, 26 September 2013, available in French on the Internet at www.cisg-france.org; Cour d'appel de Lyon, France, 22 June 2010 (misapplying Swiss law on limitation periods), and, on appeal: Cour de cassation, France, 13 February 2013, available on the Internet at www.cisg-france.org, criticizing the

appeals court for not having responded to the plaintiff's conclusions that the limitation period provided by Swiss law was inconsistent with the French conception of international public policy in that it prevented the retailer in the relevant case from acting to enforce a guarantee; Bundesgericht, Switzerland, 18 May 2009, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1027 [Cour de cassation, France, 3 February 2009]; U.S. District Court, Eastern District of Kentucky, United States, 18 March 2008 (*Sky Cast, Inc. v. Global Direct Distributions, LLC*), available on the Internet at www.cisg.law.pace.edu; Hof van Beroep Ghent, Belgium, 17 May 2004 (*Noma B.V.B.A. v. Misa Sud Refrigerazione S.p.A.*), English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 879 [Handelsgericht Bern, Switzerland, 17 January 2002], see full text of the decision; CLOUT case No. 202 [Cour d'appel, Grenoble, France, 13 September 1995] (see full text of the decision); CLOUT case No. 302 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7660)]; CLOUT case No. 300 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7565)].

³⁴⁹ For a decision indicating that parties may agree to derogate from article 39 (2), see CLOUT case No. 1058 [Oberster Gerichtshof, Austria, 19 December 2007], English translation available on the Internet at www.cisg.law.pace.edu.

³⁵⁰ CLOUT case No. 302 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7660)].

³⁵¹ CLOUT case No. 300 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7565)].

³⁵² CLOUT case No. 237 [Arbitration Institute of the Stockholm Chamber of Commerce, Sweden, 5 June 1998] (see full text of the decision).

³⁵³ CLOUT case No. 300 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7565)].

³⁵⁴ CLOUT case No. 1129 [Juzgado de Primera Instancia La Laguna, Spain, 23 October 2007].