

Buyer's Obligation to Notify in the Event of Non-Conformity of Goods

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Abstract: Under CISG, the buyer's obligation to notify in the event of non-conformity of goods is subject to a number of periods, and failure to notify when such periods expire may result in a forfeiture. Therefore, it is important to clarify the applicability of such periods for protecting the balance between buyer and seller's rights. This article focuses on the buyer's obligation to notify in Article 39 of CISG, including the relationship among the notice period, reasonable period and maximum period. This article also explains the necessity of buyer's notification system and its importance for maintaining the balance between buyer and seller's rights and interests.

Keywords: CISG; Non-Conformity Notified; Defect Notification Period; Buyer's Obligation to Notify

1. Introduction

Under Article 39 of the CISG, when exercising remedies for the receipt of non-conforming goods, the buyer is obligated to provide timely notice of the lack of conformity. The buyer must inform the seller, specifying the nature of the non-conformity, within the prescribed period after discovering or when they reasonably should have discovered the issue. Failure to do so results in the buyer forfeiting the right to invoke the non-conformity. The statutory period of notice includes two categories, namely "reasonable period" and "maximum period". There are certain difficulties in application of such notice, and there are many differences in theory and practice. Clarification of the relationship among "notice period" in Article 39, paragraph (1) "reasonable period" and paragraph (2) "maximum two years period" under Article 39 is crucial to determine whether the buyer's obligation to notify in time is performed, and directly relates to the protection of the balance between buyer and seller's rights and interests.

2. Background

The United Nations Convention on Contracts for the International Sale of Goods (CISG) holds a pivotal role in international trade. As a current signatory, China has increasingly engaged with the CISG due to its expanding international trade activities, which have grown alongside the country's ongoing reform and opening-up initiatives. The CISG is now one of the key treaties governing China's participation in global trade in goods. In practice, a large number of disputes involve notification system of international trade in goods, either for the purpose of improving one's awareness and understanding of the treaty or helping domestic enterprises and organizations to prevent and control risks in international trade in goods, it is of profound significance to deepen the study and understanding of the goods notification system of CISG as a whole.

3. The Necessity of Establishment of Buyer's Notification System

The CISG outlines a range of remedies available to the buyer in cases where the seller delivers non-conforming goods. These remedies are crafted to safeguard the buyer's interests and ensure that the objectives of the sales contract are fulfilled. As a contract for value, a sales contract entails the transfer of ownership to the buyer, which is contingent upon the buyer's payment of the agreed consideration. Therefore, only enabling the buyer to acquire the subject matter free of any defect is in line with the spirit of fairness and conducive to encouraging transactions and protecting transaction security. However, a defective delivery by the Seller does not amount to any non-performance or repudiation of the Contract. After all, in the case of non-conformance of delivery, the seller has delivered the goods and is only delivering that there is a non-conformance of the goods.[1] The degree of fault is less severe than that for repudiation or delay in performance, and even more so that the degree of fault is good faith in

most cases. This is especially so when modern goods are frequently traded. It is possible that the seller, at the time of delivery, has no opportunity to inspect in person or through a third party whether the goods provided by its suppliers are defective or non-conformance in quantity, quality, packaging or specifications. While the CISG primarily aims to protect the buyer's interests, it also ensures that the seller receives corresponding safeguards. One key protection mechanism is the system of notification for non-conformity, which requires the buyer to inspect the delivered goods within an agreed or reasonable timeframe and promptly notify the seller of any non-conformity. Failure to do so results in the buyer forfeiting the right to claim non-conformity. In addition to this notification system, the buyer's inspection obligations and the short-term special limitation period further protect the seller's interests. (See: Du Jinglin. Positioning of the Modern Sales Law Liability for Defects System)

Another key objective of the notice of non-conformity is to allow the seller to take timely remedial action, such as repairing or replacing the goods, when they do not conform to the contract. If the buyer provides prompt notice, the seller has the opportunity to address the issue. Otherwise, in many instances, a seller acting in good faith may be unaware of any defects in the goods and reasonably believe that it has fully met its contractual obligations in accordance with the contract and applicable law. To be unexpectedly notified of a non-conformity could deprive the seller of the opportunity to take economically viable corrective measures.

The buyer's act of giving notice of non-conformity upon the seller's delivery of goods is, of course, a concrete manifestation of the principle of good faith in the contract of sale.

4. Content of Notice

4.1 Concrete Content

The buyer is required to notify the seller of any non-conformity in the goods and must provide sufficient detail to specify the exact nature of the non-conformity. In cases where multiple types of non-conformity are present, notice must be given for each instance. [2] The ability to determine the precise impact of non-conformity on the overall delivery depends on the specific circumstances of each case. In such instances, providing notice of the overall effect of the

non-conformity may not always be required. However, with regard to the core obligation of notification, if the buyer can provide a detailed and precise notice of the non-conformity, they will be in a stronger position to assert their right and demand that the seller take appropriate remedial action. [3] Where the effect of the non-conformity upon the delivery as a whole can be ascertained, the buyer will be deemed to have met the requirements of CISG if he endeavors to provide as far as possible an estimate of the effect of the non-conformity upon the delivery as a whole. Moreover, it is impractical for the seller to demand that the buyer provide such an estimate when extensive information processing is required to obtain it. In fact, based on the buyer's notice, the seller should be able to discern the nature of the defect and take appropriate remedial action accordingly. [4]

4.2 Precise Description not Necessary

As mentioned in the above, the buyer should at least give notice to the seller about the lack of conformity, but it is unnecessary to give exact reasons for non-conformity. In particular, the buyer may fully comply with the requirement of a notice of non-conformity even if he only gives a description of the symptom of the problem without giving specific reasons for the symptom. After all, the goods are produced and sold by the seller, and in theory the seller should be more familiar with them than the buyer, especially for mechanical equipment and high-precision instruments. However, the law still requires the buyer to give specific reasons at this point, it is indeed imposing. [5]

4.3 Understandable by the Other Party

Having specified the quantification and nature of the non-conformity, the Buyer also needs to take into account the background knowledge of the parties. This background knowledge is meant to be professional background knowledge relating to the trade in goods. It was pointed out that where the other party does not have and cannot acquire the necessary technology or equipment or professional background knowledge in this respect, the parties to a contract should not expect the other party to discover that discrepancy in the goods in this respect, even where the parties to the same transaction have, it should not be expected that the other party to the contract should have such professional conditions or professional background

knowledge, even where the parties to such transaction have. At the same time, the buyer with relevant specific knowledge should give notice of the non-conformity to the seller. These interdisciplinary criteria make the notice of non-conformity both objective and subjective by taking into account the differences between the parties. [6]

5. Period of Notice

5.1 Relationship between “Reasonable Aerioid” and Maximum “Two-year Period”

A buyer's notice must meet not only the content requirements but also adhere to the applicable time frame. Upon discovering a lack of conformity in the goods, the buyer is obligated to provide notice within a reasonable period, as stipulated by the CISG. Failure to do so may result in the forfeiture of the buyer's right to make a claim. Article 39(1) and (2) of the CISG outline two distinct time regimes, depending on the specific circumstances of the case.

Indeed, there may be ambiguities as to the relationship between the "reasonable period" of notice and the maximum "two-year period", such that some scholars have interpreted the term "two-year period" as meaning the maximum "reasonable period" (the "reasonable cut-off point"). In fact, the provision regarding the maximum period for notice was one of the most contentious and fiercely debated aspects during the Vienna Diplomatic Conference that established the CISG. It ultimately resulted from a compromise reached between the developed and developing countries participating in the conference. Refer to Study on the Buyer's Obligations of Inspection and Notification in the United Kingdom Convention on Contracts for the International Sale of Goods, Chapter III, Section 2 "Absolute Reasonable Cut-off Period". Wu Teng. Unbearable confusion in the contract law: around the inspection period, "according to paragraph 1, in principle, the period of notice of inadequacy is a reasonable period, but its length should be limited, so paragraph 2 provides a time frame of up to two years ..." From the perspective of the CISG's original intent, the "two-year period" should be considered in conjunction with both the "inspection period" and the "reasonable period" for notification. Within the maximum two-year period from the receipt of the goods, the buyer must still provide notice within a "reasonable period" after

discovering or when they should have discovered the non-conformity, as stipulated in Article 39(1). This means the buyer should not wait until the expiration of the two-year period to notify the seller. The "two-year period" serves not as a cap on what is deemed "reasonable," but rather as the ultimate deadline for discovering and reporting non-conformities that could not have been identified even after diligent inspection. [7] If the "two-year period" is referred to as the maximum period of notification, it to some extent conceals the fact that the subject of it is the period of discovery of the potential non-conformity. Similarly, the two-year period in Article 39 (2) of CISG is "an absolute period of preclusion; interruptions in the period will not be considered. Its expiration deserves recognition by the court. "See Comments on the United Nations Convention on Contracts for the International Sale of Goods written by Peter Schlechtriem, German author.

5.2 Relationship between "Agreed Period of guarantee" and Maximum "Two-Year Period"

Article 39(2) of the CISG includes an exception to the maximum two-year period after which the right to claim may expire, provided this period does not conflict with an agreed guarantee period (often referred to as a contractual guarantee period). In other words, if the contract specifies a different guarantee period, this agreed period will take precedence over the two-year maximum set by the Convention for that particular contractual relationship. [8]

It should be noted that many scholars believe that, the parties may exclude the two-year period based on this proviso. As long as the contractual period of guarantee is "not equal to two years," the contractual period of guarantee shall take precedence, so as to extend or shorten the maximum period of "notice of non-conformity". However, from the perspective of the legislative purpose of the Convention, it is not appropriate to read "inconsistent" as "not the same (or equal)" from this perspective. Although the buyer's obligation to give notice is not true obligation in nature, from the point of view of its corresponding rights "rely on non-conformity", the period of performance of the obligation is also the scope of exercise of these rights (or figuratively as the "garment of rights"), so notice may be regarded as a protective right for the buyer to realise the remedies in case of

non-conformity of the goods. On the contrary, the remedies for breach of contract under the overcoat, such as declaration of fundamental breach, request for price reduction, compensation, etc., are material rights. To achieve its purpose, the scope of a protective right must be greater than or equal to (preferably greater than) the material rights. The closer a protective right is to a material right, the more likely it is to lead to unfairness at the critical point. If a warranty period less than two years is regarded as the "longest notice period", then, for any potential non-conformity arising at the last moment of the warranty period, the buyer will lose its right of remedy for its inability to give notice and therefore not have any remedy available to it if no warranty period is set up, which is obviously illogical and contrary to the purpose of the warranty period. [9] Therefore, "inconsistent" should be interpreted as "incongruous" or "contradictory". If the material term of the right (warranty period) in a contract is shorter than the term of the protective right, the term of the protective right shall continue to apply (the stipulation of two years in this paragraph shall continue to apply). The two-year period of the Convention does not apply only if the material term of the right (warranty period) in the contract is longer than the longest two-year period in the Convention. [9] Since the Convention does not stipulate what the longest period should be applicable at this time, this period should still be determined by the law of conflicts of laws for the governing law. That is to say, in violation of the obligor, the obligor will not incur liability for breach of contract, while only the person bearing the obligation will suffer reduction or loss of rights.

It is important to note a special consideration: due to the flexible nature of the CISG, the parties to a contract may, pursuant to Article 6 of the CISG, agree to exclude its application or modify its provisions as they pertain to their transaction. In such cases, even if the agreed contractual warranty period is shorter than the two-year period, the two-year period stipulated by the CISG will still take precedence.

6. Legal Consequences of Non-Fulfilment of the Duty to Notify

Under Article 39, a buyer forfeits the right to assert a claim based on the non-conformity of the goods if they fail to notify the seller of such non-conformity within a reasonable time.

Consequently, this omission deprives the buyer of several remedies, including the right to seek damages, demand the delivery of substitute goods, request repairs, extend the performance period for the seller's obligations, declare the contract rescinded, or pursue a price reduction.

Under the Convention, failing to provide timely notice of non-conformity significantly disadvantages the buyer, resulting in the "loss of the right to rely on a lack of conformity." This forfeiture means the buyer is deprived of several remedies specified by the Convention, including the right to demand performance of the contract under Article 46, the right to rescind the contract pursuant to Article 49, the right to a price reduction as outlined in Article 50, and the right to seek damages in accordance with Articles 74 to 77.

7. Exception to Buyer Notice in Case of Non-Conformity

7.1 Exceptions Provided for in Article 40

If the non-conformity of the goods is a fact that the Seller knew or should have known but failed to disclose to the Buyer, the Seller cannot invoke Articles 38 and 39 to escape liability for damages on the grounds that the Buyer did not meet their obligations to inspect the goods and provide timely notice of non-conformity. In such circumstances, the Buyer retains the right to make a claim despite their failure to fulfill the inspection and notification requirements.

7.2 Exceptions Provided for in Article 44

If the PURCHASER has a reasonable excuse for failing to provide the required notice, they may still seek remedies such as a price reduction under Article 50 or claim damages, excluding loss of profit, provided that remedies like contract avoidance or the return of goods are no longer feasible. Article 44 does not absolve the buyer from the obligation to notify of non-conformity within the stipulated period; rather, it alleviates the consequences of failing to meet this obligation.[10]

7.3 Conclusion

The buyer's obligation to notify of non-conformity under the CISG is designed for purpose of ensuring that the interests of both parties to a contract can be better served in international trade, and to this end, the system has been used in the form of the buyer's

obligation. The reason for this is to restrict the buyer from abusing its right to protect itself, so that the seller's just interests are maintained. Under this system, the interests of both parties are coordinated. In practice, it is hoped that the application of this system will better protect the legitimate rights and interests of buyers and sellers in international trade, improve the efficiency of international sale of goods, and promote the development of international trade.

References

- [1] Liang Huixing. Research on Case Precedents and Legislation in Civil Law Theory. Beijing: China University of Political Science & Law Press. 1993: 170.
- [2] Shi Shangkuan. Treatise on the Law of Indebtedness. Beijing: China University of Political Science & Law Press. 2000: 33.
- [3] Micheal Bridge. The International Sale of Goods: Law and Practice (Second Edition). Oxford: Oxford University Press, 2007.
- [4] Peter Schlechterim. Commentaries on the United Nations Convention on Contracts for the International Sale of Goods. 3 Edition. Beijing: Peking University Press, 2006: 114.
- [5] Lian Junya. Dilemmas of Judicial Application of the United Nations Convention on Contracts for the International Sale of Goods in China and Responses – A Party Choice of Chinese Law. *International Law Research*, 2023 (01): 129-144.
- [6] Herbert Bernstei. Joseph Lookofsky. Understanding the CISG in Europe (Second Edition). New York: Kluwer Law International, 2003.
- [7] Ulrich Schroeter. A Time-Limit Running Wild: Article 39 (2) CISG and Domestic Limitation Periods, *Nordic Journal of Commercial Law*, vol. 2017, 2, 2017.
- [8] Yuhui Deng. Exploration of the Application of CISG in International Commercial Arbitration. *Journal of Southeast University (Philosophy and Social Sciences Edition)*, 2024, 26 (S1): 112-118. DOI: 10.13916/j.cnki.isn1671-511x.2024.s1.024.
- [9] Lu Chenghua. Reference for and Reconstruction of the Rules of Defect Notification Period. *Journal of Gansu University of Political Science and Law*.
- [10] Wang Zhuo. Study on the Buyer's Obligations of Inspection and Notification under the United Nations Convention on Contracts for the International Sale of Goods. Hunan: Hunan Normal University, 2012. DOI: 10.7666/d.y 2148113.