VI.2 - Deadline for notice of defects

(a) The buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity. The time starts to run when the goods are supplied or when the buyer discovers or could be expected to discover the lack of conformity, whichever is later.

(b) The buyer loses the right to rely on a lack of conformity if the buyer does not give the seller notice of the lack of conformity within two years from the time at which the goods were actually handed over to the buyer in accordance with the contract.

(c) Where the parties have agreed that the goods must remain fit for a particular purpose or for their ordinary purpose during a fixed period of time, the period for giving notice under subsection (b) does not expire before the end of the agreed period.

(d) The buyer does not have to notify the seller that not all the goods have been delivered if the buyer has reason to believe that the remaining goods will be delivered.

(e) The seller is not entitled to rely on this Principle if the lack of conformity relates to facts of which the seller knew or could be expected to have known and which the seller did not disclose to the buyer.

Commentary:

1 This Principle follows from the presumption of professional competence of international businessmen. In the interest of legal certainty and speed, the buyer must notify the seller of a lack of conformity of the goods delivered to him by the seller and the nature of such lack if he wants to preserve his legal right arising out of such non-conformity.

2 The timeframe within which such notice must be given by the buyer must be determined against the Principle of reasonableness, taking into account all circumstances of the case, including the nature of the transaction and of the goods sold, practices established between the parties and relevant trade usages. Principle IV.4.2 applies to the notice.

3 Subsection (b) is derived from Art. 39 (2) CISG which provides that the buyer loses his 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.

4 Given that the Principle is intended to protect the seller against unexpected claims of non-conformity by the buyer, the seller is not protected by the Principle in situations in which such protection would be contrary to the overriding Principle of good faith. Subsection (e) clarifies that such a situation exists if the lack of conformity relates to facts of which the seller knew or could be expected to have known and which the seller did not disclose to the buyer.