

# When International Contracts for the Sale of Goods are Traps for Business People

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## Abstract

*Sixty-eight nations, accounting for more than two thirds of global trade, follow international legal rules which govern contracts for the international sale of goods.<sup>1</sup> In light of the recent trends in globalisation and liberalisation of international trade, business managers, previously accustomed to their own local or domestic laws, must deal with the perils and traps that arise from these international rules. Most of Europe, the United States, Russian Federation, Mexico, Australia, Canada and China have adopted the United Nations Convention on Contracts for the International Sale of Goods (CISG); an international agreement between these nations that embodies the new rules of international trade agreements involving the sale of goods.<sup>2</sup> The CISG pre-empts a country's domestic law, including the Uniform Commercial Code (UCC) in the United States, which could present precarious results for business managers who are unaware of its existence (Mather, 2001).*

## Introduction

This paper is comprised of twelve sections. First is a brief synopsis of the literature on trade liberalisation and the tribulations business people must become sensitive to. The next section demonstrates what trade laws apply under various circumstances. The section which follows alerts business people to the fact that some major trading countries preempt international trade law with local law. Subsequent segments address specific trade rules and their impact upon business.

## Hazards for Business People Unfamiliar with the CISG

Essential differences between domestic law such as the Uniform Commercial Code (UCC) and Contracts for the International Sale of Goods (CISG), along with advancements in communications, electronic commerce and transportation which increase the speed of global trade, have created confusing and complex challenges for businesspeople. While many of these problems may require legal advice, it is impractical

for lawyers to be involved in the day-to-day dealings that produce nearly all international contracts for the sale of goods. Business leaders and attorneys, being accustomed to their nation's domestic sales law, often come to legal conclusions that may differ from the rules that control international sales, increasing the risk of doing business. Business leaders who have received some education in the CISG may be able to spot crucial CISG issues. Unfortunately, business schools primarily teach domestic law and fail to properly cover the rules controlling the international sale of goods.

The CISG rules, in some ways, make it easier to enter into and be bound by enforceable sales agreements. In contrast to laws such as the UCC, the final words of a written contract may be superseded by prior oral testimony or other evidence that indicates that a written contract is not consistent with the actual understanding or intent of the parties. The UCC's 'parol evidence rule' states that where parties have reduced their agreement to a writing, intended to be final, it may not be contradicted by evidence of any prior or contemporaneous oral or written statements or terms. Its rationale is that this type of evidence would normally be included in the final document.<sup>3</sup>

There is no parol evidence rule found anywhere in the CISG. In fact, the CISG states that consideration is to be given to all relevant circumstances including prior negotiations. It requires contemplation of evidence of the parties' subjective intent, conduct and consideration is to be given to all germane circumstances including negotiations. Business management must be aware of the potential that written contract terms may be supplanted by the use of extrinsic evidence of inconsistent subjective intent. Evidence of the parties' subjective intent could control despite a document signed by the parties. Insertion, in the contract, of a clearly worded merger or integration provision would make it more evident that the parties intended that the contract was the entire and final agreement.<sup>4</sup> Therefore other prior or contemporaneous agreements and evidence that is contradictory would be inadmissible.

In what is commonly known in business sales as the 'battle of the forms', a typical way of doing business (where manufacturers or other distributors and buyers exchange form contracts that contain different or additional terms), the UCC and CISG results are often found to be diametrically opposed. Under Article 19 of the CISG, similar to the old common law requirement ('mirror image rule' where the terms of the acceptance must mirror the terms of the offer), there is no enforceable agreement because of the lack of mutual agreement or a meeting of the minds.<sup>5</sup> By and large, an acceptance which contains additional or different terms from the offer operates as a rejection or a counter offer. On the other hand, the UCC tries to avoid the harsh common law consequences. Unless the offeree's acceptance is conditional on the offeror's agreement to the different or additional terms, the offeree's acceptance with the additional non-material terms become part of the contract. That is unless the offeror specifically objects or limits the acceptance to the terms of the offer.<sup>6</sup>

One US Federal Court addressed these issues when a Florida buyer of ceramic tiles orally agreed with an Italian seller on material terms, such as price, quantity and payment, and signed the front of the seller's pre-printed form contract. The reverse side of the printed form, however, contained certain clauses with terms that if enforced would have

led to a substantial award for the seller. Beneath the signature line, on the front of the contract, was pre-printed language wherein the purchaser acknowledged and approved the clauses on the back of the form.<sup>7</sup>

The purchaser proffered to the court evidence, by way of affidavits executed by the seller's own representatives, to contradict the written terms of the document as the parties' true intent not to be bound by the reverse side of the contract. The Federal Court found that the affidavits should be considered and that the CISG precludes the parol evidence rule. The Judge's opinion stated, however, that: 'This is not to say that parties to an international contract for the sale of goods cannot depend on written contracts or that parol evidence regarding subjective contractual intent need always prevent a party relying on a written agreement from securing summary judgment'.<sup>8</sup>

According to the UCC, an authorised form of acceptance by an offeree to an offer is considered received by the offeror when it is placed in the public mail system. Simply when the signed acceptance is mailed - even if it never reaches the offeror - there is a legally binding contract (known as the 'mailbox rule').<sup>9</sup> Under the CISG, an acceptance is not effective until it is actually received by the offeror. Also, an offeree who has sent an offeror an acceptance of an offer is free to reject the offer without liability provided that the rejection reaches the offeror before the acceptance.<sup>10</sup>

To demonstrate the implications of the latter to business managers, consider a Chilean buyer of clothing manufactured by a company in Korea. Both countries are members of the CISG. On 24 August 2006 the Chilean wholesaler sends a written purchase order to the Korean manufacturer offering to buy its goods. On 6 September 2006 the Korean company signs the purchase offer accepting the order and places it into the regular first class mail system. However, on 7 September the same Korean company receives a similar purchase order from an Irish company, who is a more highly valued customer, and it only has the capacity to fill one of the two orders.

If the UCC is the controlling law then a binding and enforceable contract occurred when the acceptance was placed in the mailbox, even if the acceptance becomes lost in the mail. Since both nations are CISG members, the convention automatically applies and there is no acceptance until it has been received by the Chilean buyer. The Korean manufacturer is free to reject the offer and accept the Irish buyer's offer. Both the rejection and the new acceptance can be done verbally under the CISG or by fax, e-mail or overnight courier. Owing to the advent of the internet, faxes and other forms of modern communication technology, there is now rarely a need for the application of the mailbox rule because acceptances can be communicated instantly.

## **Conflict of Law**

One of the main purposes of the CISG is to prevent conflict of law issues concerning international contracts for the sale of goods. In the past, each individual country where buyers' or sellers' businesses were located usually applied its local or domestic law to sales contracts. Presently, under the CISG, domestic law is often replaced by this International Convention, which can create confusion and detrimental results for businesspeople that are accustomed to their own country's local laws. The CISG, when it applies, is the

domestic law of the United States (US) and other contracting states, pre-empting local law, which would include the UCC. For many years the UCC has been the law governing most international contracts for the sale of goods throughout the world and it still covers many non-CISG international agreements. Interestingly, since most international sales agreements in North America are subject to this International Convention as Canada, the US and Mexico are members the CISG, it has become the law of the North American Free Trade Area established by the North American Free Trade Agreement.<sup>11</sup>

The CISG applies solely to international business-to-business contracts (not consumer purchases) for the sales of goods and not to leases, labour, services, real property or any transaction that is not a sale of goods.<sup>12</sup> Furthermore, when all the parties are from different CISG countries, the Convention automatically controls. If one of the contracting parties has its place of business in a CISG state and another party is in a non-CISG state, the Convention may apply automatically. One significant declaration is that the CISG rules adopted by the US apply the CISG automatically only when both parties are located in CISG 'Contracting States' (nations).<sup>13</sup> Most of the other countries adopted the usual rules, which apply the CISG if only one of the parties is located in a CISG nation and the law of that nation controls the contract. Of course, the parties to a contract, or courts hearing contract cases, may choose to apply the CISG whenever they believe this is appropriate. The CISG allows States to make such declarations.<sup>14</sup>

Many international businesses remain reluctant to apply the CISG as contracts are negotiated on a daily basis. The Convention provides freedom to contract so that parties can agree that CISG will not apply. The parties can opt out or opt in concerning the CISG, however, if they do not opt out it will automatically apply as long as the parties' principal places of business are in different CISG states.<sup>15</sup> In a situation involving a contract between, for example, parties from Japan and United Kingdom (neither of which is currently a Contracting State), the CISG can apply to their contract if the parties so elect.

Also the parties can opt out of only one or more CISG provisions. Accordingly any attempt to opt out must be unequivocally and clearly set forth. It appears that US corporations and their counsel continue to oppose negotiating contracts in accordance with the sales convention. Accordingly, 'if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract...'<sup>16</sup> Take the example of a Russian Federation corporation which has places of business located in New York, Moscow, Paris and London. Representatives from its New York office negotiate a sales contract with a German corporation which has its place of business in Berlin. The goods will be produced by the Russian corporation at its Paris factory and then shipped from Paris to Berlin. If both parties know that the goods are to be produced in the Russian-owned Paris factory, the place of business which controls will probably be the French facility.

It follows that interrelated agreements involving licensing, distribution and so on would necessitate choice of law questions to be negotiated and agreed to by the parties. The CISG would only apply in these situations if the parties so agreed. Normally CISG

would not apply to agreements that do not apply to sale of goods. Therefore, it would be wise to negotiate the choice of law questions expressly at the time of contracting.

## **Non-CISG Trading Countries**

Very few important major industrial trading powers are not members of the CISG. These include India, Brazil, Portugal, Taiwan and, in particular, Great Britain and Japan.<sup>17</sup> The CISG system of remedies contains important characteristics of the CISG which are not present in the Japanese Civil Code (Shigeru, 2001). Curiously, Great Britain, which played an active role in the drafting of CISG, is not a member and has never officially explained its reasons for not joining. The current Labour government has expressed its willingness to incorporate the CISG into British sales law (Loewe, 1998).

## **Contract Validity, Warranty Rule Displacement, Exclusions and Gap Filling**

CISG rules do not regulate but rather expressly exclude contractual validity issues. Questions concerning issues such as fraud, misrepresentation, mistake, incapacity, violations of public policy, duress, undue influence, lack of agency and illegality would not necessitate application of the CISG. Also the Convention does not apply to the effect that the contract has on the property in the goods sold.<sup>18</sup>

Important differences between the CISG and the UCC occur when essential contract terms (such as price or delivery) are absent from the contract. Mutuality of agreement is necessary for a contract to be enforceable and the courts will not enforce a contract if an essential term has not been agreed upon by the parties. Essential terms can include countless requisites, nevertheless the rationale of commercial laws such as the CISG and UCC is to reduce the amount of essential terms so that deals occur uneventfully. This is done by supplying certain terms when the parties have omitted them from the agreement. These terms are no longer essential because commercial laws make provision for them. If, for example, a contract does not specify a delivery time, delivery must be within a reasonable time and under the UCC omission of this term would be considered specific and definite enough for a court to enforce.<sup>19</sup>

Definiteness of terms is essential because there are terms that must be approved by the parties with sufficient certainty so as to avoid creating litigation. Without a significant level of definiteness of certain terms, courts will not enforce contracts. As an illustration, a court cannot enforce a contract if the parties have not specified the article that is to be purchased. The CISG requires that the parties select the item being purchased, its price and its quantity while the UCC uses flexible and comprehensive gap fillers from US law. The CISG uses gap fillers from specific CISG provisions or international law, which are not as flexible or comprehensive as US domestic law.<sup>20</sup>

Article 4 states that the: 'Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract'. Accordingly the rights of third parties are excluded and left to the choice of law procedures and the controlling private international law. This would exclude creditors and remote purchasers or ultimate users of goods, for example where a buyer resells goods to a

third party or products move along in the stream of commerce. Liability of the seller for physical and emotional harm caused by the goods to any person is also excluded from the purview of the CISG.<sup>21</sup> Product liability personal injury claims do not fall under the scope of the CISG. Third parties injured by defective goods are forced to seek domestic tort remedies, if available under choice of law rules.

Other questions can arise, however, as to whether the contract and product claims must be pursued at the same time and in the same forum. In countries such as the US these claims should be filed together in a single court or arbitration system or they can be barred by the 'single controversy rule'.<sup>22</sup>

The Merriam-Webster dictionary defines a warranty as 'a collateral undertaking that a fact regarding the subject of a contract is or will be as it is expressly or by implication declared or promised to be'.<sup>23</sup> A seller's warranty, under the UCC, applies to 'any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty'.<sup>24</sup> For example if the UCC controls, as the private international law, then a dinner guest who falls ill from ingesting unwholesome food products can pursue legal action against the seller/manufacturer and/or distributors.

The UCC allows disclaimers of warranties if they are in writing, and are 'conspicuous' which arguably are validity rules, excluded under the CISG.<sup>25/26</sup> Under CISG, the implied obligations of the seller do not apply when 'the parties have agreed otherwise'.<sup>27</sup>

## **Performance, Remedies and Damages**

A UCC regulation called the 'perfect tender' rule allows purchasers to void contracts and reject shipments of non-conforming goods, under a non-installment contract, based upon insignificant defects and despite whether or not the buyer receives substantially the goods the contract required. This is, however, subject to the seller's rights to cure under certain circumstances.<sup>28</sup> The CISG permits rejection, eliminating the 'perfect tender rule', based upon much tougher criteria such as a fundamental breach which deprives the party of its expectations.<sup>29</sup>

A buyer can demand that a seller perform ('specific performance') contractual duties unless the buyer has used a remedy which is contrary to the CISG.<sup>30</sup> Purchaser can also seek substituted performance or repair in addition to requiring performance and demanding damages.<sup>31</sup> Sellers also can seek damages, from buyers in breach, in addition to remedies such as specific performance.<sup>32</sup> In sharp contrast to the CISG, the common law and UCC remedy is principally the payment of money damages. Specific performance is an equitable remedy wherein courts will seldom order a breaching party to specifically perform contractual duties and only if the goods are unique.<sup>33</sup> An example would be a contract to buy rare coins, artwork or antiques where money damages would be insufficient.

One interesting difference is that the UCC provides a limitation period of four years within which a party must file its legal action or the claim is barred forever. The purpose of

this rule is to avoid stale claims where memories fade and evidence disappears or is lost.<sup>34</sup> The CISG has no filing limitation but there is a separate law: the Convention on the Limitation Period in the International Sale of Goods as Amended by the Protocol Amending the Convention on the Limitation Period in the International Sale of Goods.<sup>35</sup> While this Convention's four period is the same, some CISG members have not adopted this Convention. In addition, CISG parties have freedom of contract and can actually exclude the application of the Limitation Convention in the contract.<sup>36</sup> According to the Convention, an aggrieved party can recoup full 'damages for breach of contract by one party consist[ing] of a sum equal to the loss' which would include loss of profits as long as it was reasonably foreseeable under the facts that were known or should have been known as possible and not probable consequences.<sup>37</sup>

Under the UCC a buyer can recover 'consequential damages resulting from the seller's breach includ[ing] any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know (loss must be foreseeable) and which could not reasonably be prevented by cover ... and injury to person or property proximately resulting from any breach of warranty'.<sup>38</sup> The UCC standard appears to be stricter, thus to recover loss of profits the damages must be more than just foreseeable but reasonably certain.

### **Anticipatory Breach**

Under the CISG, a party who has reasonable grounds to think that the other party will not perform is in a more difficult position than it would be in under Article 2 of the UCC.<sup>39/40</sup> The Convention permits suspension of performance if it seems as though 'the other party will not perform a substantial part of his obligations'. The suspending party must then promptly provide notice of the suspension and also continue performing if the other side provides adequate assurance of performance.<sup>41</sup> According to the Uniform Commercial Code, if a party repudiates a contract concerning a performance which is not yet due, the aggrieved party can wait for performance for a reasonable period or sue for damages immediately and in both situations suspend the performance of his obligations.<sup>42</sup>

### **Right to Cure**

CISG gives the seller the right to cure deficiencies in the performance of its contractual obligations. Prior to the contractual delivery date, if a seller has delivered goods up to that date, the seller has the right to cure and supply any missing part or deficiencies in the quantity of goods as long as the buyer has not been unreasonably inconvenienced or sustained unreasonable expenses.<sup>43</sup>

The CISG provides that even after the delivery date, a seller can cure a failure to perform as long as it is done without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. If the seller requests that the buyer make known whether he will accept performance and the buyer does not comply within a reasonable time then the buyer may not, during that period of time, resort to any remedy which is inconsistent with

the seller's performance.<sup>44</sup> Both of the above CISG provisions also allow the buyer the right to pursue damages.

## **Price Reduction**

Article 50 of the Convention permits buyers, who have received and accept non-conforming goods, a remedy to unilaterally reduce the price in the same proportion as the value that the goods actually delivered have at the time of the delivery bears to the value that conforming goods would have had at that time.

## **Revocation and Firm Offer**

It is much easier to construe an offer as being irrevocable under the CISG as compared to the UCC. Under the UCC, the offeror/merchant (party making an offer) is usually able to revoke the offer at any time before acceptance unless the offeror has agreed in writing that the offer shall remain open for a certain period or a reasonable time, not to exceed three months (a 'firm offer').<sup>45</sup> Neither a writing nor a time limit is required by the CISG.<sup>46</sup> Further, a CISG offer cannot be revoked if the offeree can show he reasonably relied on the offer as being irrevocable.<sup>47</sup>

## **Avoidance of Contract**

Article 49 of the CISG allows the buyer to avoid a contract if the failure by the seller to perform any of his/her contractual duties amounts to a fundamental breach of contract or after the occurrence of a late delivery or other breaches (i.e., as in a defect in title) within a reasonable period of time. A breach committed by a party is fundamental 'if it results in such detriment to the other party as substantially enough to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result'.<sup>48</sup> In addition, a reasonable period of time can be set by the purchaser for the seller to perform, however, the purchaser may not resort to any remedy for breach of contract.<sup>49</sup> A buyer's declaration of avoidance of the contract is effective only if made by notice to the other party.<sup>50</sup>

The buyer's right to require avoidance is lost if it is impossible for him to make restitution of the goods substantially in the condition in which they are received. That is, unless it can be shown that it is not due to the buyer's conduct or that the goods have perished or deteriorated as a result of an article 38 examination or if they have been sold, consumed or transformed by the buyer in the normal course of business or used before he discovered or should have discovered the non-conformity.<sup>51</sup>

A party to a contract for delivery of goods by instalments can avoid any instalment if the failure of the other party to perform obligations concerning that instalment amounts to a fundamental breach of contract with respect to that instalment. Further where a party's failure to perform in reference to an instalment gives the party reasonable grounds to conclude that a fundamental breach will arise with respect to future instalments, he may declare the contract avoided for the future, if made within a reasonable time.<sup>52</sup>



## **Interest**

The question of interest which is not excluded by article 4 falls into the CISG area of gap filling under article 7(2). These questions are settled in conformity with the rules of private international law.<sup>53</sup> According to the CISG: 'If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74'.<sup>54</sup> Unfortunately there is no article that clearly specifies or demonstrates how to calculate interest in all situations. One article establishes that a seller who is required to refund the price must also pay interest from the date on which the price was paid.<sup>55</sup> In the sole US case involving interest, *Delchi Carrier S.p.A. v. Rotorex Corp.*,<sup>56</sup> the District Court allowed a CISG plaintiff to recover prejudgment interest at US Treasury bill rates indicating that since Article 78 does not specify the rate of interest, the court could use its discretion.<sup>57</sup>

## **International Oral Sales Contract: Are they Binding?**

### ***Statement of Facts***

An American manufacturer of steel with its global headquarters in Pittsburgh needs to purchase a fleet of trucks at a cost of two million dollars for its facilities in the US. Its corporate shipping and production manager, after reviewing the sales literature from several manufacturers, decides to purchase from a Swedish manufacturer. The US shipping and production manager then meets in Geneva for dinner with the Swedish manufacturing executive responsible for international sales and verbally orders the specific trucks necessary for its American facilities. This includes the type, quantity and price of the motor vehicles. The Swedish manufacturing executive orally accepts the offer.

Later that day, the US shipping and production manager is advised by her staff member of a truck manufacturer located in the United Kingdom selling similar trucks for 1.7 million dollars or a \$300,000 savings. Desiring to save money by purchasing the products from the British seller, with the belief that the oral agreement with the Swedish manufacturer is unenforceable, the steel company executive orally agrees to purchase the trucks from the British manufacturer, who verbally accepts the offer.

The next day, a junior purchasing employee employed by the steel company locates a Chinese manufacturer who is selling similar trucks for 1.3 million dollars. With a savings of \$700,000 it is obvious that the best deal for the American Company would be from the Chinese manufacturer. Depending upon her experience with US domestic law, the US shipping and production manager negotiates a verbal agreement with the Chinese manufacturer. The US manager then advises the Chinese executive that she will forward a written contract.

### ***Issue***

What, if any, legally binding contract or contracts have been created between the US Company and the Swedish, British or Chinese companies?

## ***Finding/Rules***

### ***United States Law/The UCC***

Section 2-201 (1) of the UCC states that contracts for the sale of goods of \$500.00 or more are not enforceable unless they are in writing. The verbal agreements between the US Company and the Swedish and British manufacturers would be unenforceable under the UCC. The UCC does provide, however, that when a merchant receives a written confirmation from another merchant, and there is no objection from the recipient within 10 days, the contract is enforceable. Under the UCC, if the Swedish executive forwarded a written confirmation within 10 days of the order, the agreement between the US and Swedish companies would be enforceable.<sup>58</sup> Also, the verbal agreement that was put into a written contract would be enforceable against the US Company after it is signed on behalf of the Chinese Company. Being international agreements, the UCC does not apply to any of these agreements because the products are produced and considered sold in the sellers' countries and sellers are all located in countries other than the US.

### ***The CISG***

The parties from the US and Sweden are located in different CISG States which means that the CISG controls.<sup>59</sup> Oral international agreements for the sale of goods are valid in any amount because a writing is not required by the CISG.<sup>60</sup> Therefore, under the CISG, the US Steel company is legally bound to buy the Swedish vehicles or to pay damages.

According to the CISG, if only one of the contracting parties has its place of business in a CISG state the CISG can apply. Under the CISG, the US has declared that when a party is located in the US, the CISG will not apply to contracts made by that party if only one party is located in a state which is a CISG member.<sup>61</sup> Great Britain is not a member of the CISG. Accordingly, the agreement made between the Pennsylvania and the British companies is not controlled by the CISG. Instead the domestic law of the producing country (Great Britain) controls the agreement. Under UK law, oral contracts for the sale of goods are enforceable (Forte, 1997; Linarelli, 2003). The British manufacturer, as for the Swedish company, has a binding verbal contract with the Pennsylvania Company who must purchase the British vehicles or pay damages to the British manufacturer.

The third verbal contract, and the most favourable to the US purchaser, is not binding because China has validly declared that the CISG rules allowing oral contracts do not apply where any party has its place of business in China.<sup>62</sup> Only when the contract is put in writing and signed by the Chinese Company does it become legally enforceable against the Pennsylvania company.

## **Results**

The Pittsburgh executive was aware of the UCC US domestic law but unfortunately was uninformed of the rules of the CISG or global trends in the laws of other nations that require the enforcement of verbal agreements. Her agreement with the Swedish company is enforceable under the CISG. Her agreement with the British company is enforceable

under private international law which is the law of Great Britain. The purpose of these negotiations and research was so that she could take advantage of the Chinese offer. However, the manager's agreement with the Chinese company would only become enforceable against both parties as soon as both parties sign it. The steel company executive could wind up with two or three enforceable contracts and not the one truly desired, compelling her company to pay damages upon a failure to perform.

## Conclusion

Faced with the rapid pace and continued growth of globalisation and free international trade, managers who had been accustomed to their own local nation's laws must be conscious of the differences between domestic law, such as the UCC and the CISG. However, other than NAFTA, which has incorporated the CISG as its sales rules, the Americas (South and Central America), Africa and Asia have been much slower than Europe to adopt a uniform international sales law. In the Americas it will take the addition of a power such as Brazil, which has resisted to date, to spur adoption by other South and Central American Nations.

Business leaders who fail to familiarise themselves with the CISG jeopardise their own professional status as well as risking damage to their companies. Many reported CISG decisions have occurred as the result of the parties or their attorneys and their respective failure to take the Convention into consideration. Too often this has led to lawsuits where companies learn about the CISG the hard way. As it is unrealistic for attorneys to be involved in the daily transactions that generate practically all international contracts for the sale of goods, only relevant education and experience can assist business leaders to deal with the dangers and traps that arise from these international rules. It is incumbent on business schools and companies to properly educate modern business managers.

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## Notes

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<sup>1</sup> United Nations Convention on Contracts for the International Sale of Goods (CISG) April 11, 1980, S. Treaty Doc. No. 98-9 (1983), 19 I.L.M. 668 (1980), reprinted at 15 U.S.C. app. 52 (1997) Pace Law School Institute of International Commercial Law (Available from [www.cisg.law.pace.edu/](http://www.cisg.law.pace.edu/)).

Current member states: Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Burundi, Canada, Chile, China, (PRC) Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea, Honduras, Hungary, Iceland, Iraq, Israel, Italy, Republic of Korea, Kyrgyzstan, Latvia, Lesotho, Liberia, Lithuania, Luxembourg, Mauritania, Mexico, Moldova, Mongolia, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Romania, Russian Federation, Saint Vincent & Grenadines, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Uganda, Ukraine, United States, Uruguay, Uzbekistan, Yugoslavia, Zambia, USSR (superseded)

Newest member states: Cyprus (E.U. member, effective April 1, 2006), Liberia (effective October 1, 2006), Paraguay (effective February 1, 2007). Armenia (effective February 1, 2007).

<sup>2</sup> Id. Art. 1(1) (a).

<sup>3</sup> Commercial Transactions (UCC) N.J.S.A. 12A: 2-202.

<sup>4</sup> MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostina, S.p.A., 144 F. 3rd 1384 (11th Cir 1998).

<sup>5</sup> CISG Art. 19; Art. 8 (1) (3).

<sup>6</sup> UCC § 2-207.

<sup>7</sup> MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostina, S.p.A., 144 F. 3rd 1384 (11th Cir 1998).

<sup>8</sup> MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostina, S.p.A., 144 F. 3rd 1384 (11th Cir 1998).

<sup>9</sup> Restatement (Second) of Contracts § 63 (1981); UCC §2-206 (1).

<sup>10</sup> CISG Art. 15.

<sup>11</sup> North American Free Trade Agreement 19 U.S.C.A. § 3311-3317 (Supp. 1995).

<sup>12</sup> CISG Art. 1a and Art. 2a.

<sup>13</sup> CISG Art. 95; China, Czech Republic, Saint Vincent and the Grenadines, Singapore, and Slovakia, also do not apply the CISG automatically if one party is located in a non-CISG nation as they have made declarations under subparagraph 1.1(b) and Article 95). Pace Law School Institute of International Commercial Law. Available from [www.cisg.law.pace.edu/](http://www.cisg.law.pace.edu/).

<sup>14</sup> CISG Art. 95; Art. 1; Art. 6.

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- <sup>15</sup> CISG Art. 6.
- <sup>16</sup> CISG Art. 10.
- <sup>17</sup> Pace Law School Institute of International Commercial Law. Available from [www.cisg.law.pace.edu/](http://www.cisg.law.pace.edu/).
- <sup>18</sup> CISG Art. 4(b).
- <sup>19</sup> UCC § 2-309.
- <sup>20</sup> CISG Art. 7.2.
- <sup>21</sup> CISG Art. 5.
- <sup>22</sup> *Mitcheson v. Harris*, 955 F.2d 235, 239 (4th Cir. 1992).
- <sup>23</sup> Merriam-Webster on Line Dictionary. Available from [www.m-w.com/cgi-bin/dictionary](http://www.m-w.com/cgi-bin/dictionary).
- <sup>24</sup> UCC § 2-318.
- <sup>25</sup> UCC § 2-316.
- <sup>26</sup> CISG Art. 4a.
- <sup>27</sup> CISG Art. 35 (2).
- <sup>28</sup> UCC Section §2-601 comment 2 to § 2-106. § 2-612, § 2-608. § 2-508.
- <sup>29</sup> CISG Art. 49(1) Art. 25. Art. 46(2).
- <sup>30</sup> CISG Art. 46 (1).
- <sup>31</sup> CISG Art. 45(1) (b) and (2).
- <sup>32</sup> CISG Art, 61(1) (b) and (2).
- <sup>33</sup> Rest.2d § 360, UCC 2-716 Rest.2d § 359; *Magellan International Corporation v. Salzgitter Handel GMBH*, 76 F. Supp., 2d 919 (D. C. Ill. 1999).
- <sup>34</sup> UCC § 2-725.
- <sup>35</sup> Convention on the Limitation Period in the International Sale of Goods as Amended by the Protocol Amending the Convention on the Limitation Period in the International Sale of Goods(1974 Amended 1980). Available from [www.uncitral.org/pdf/english/texts/sales/limit/limit-conv.pdf](http://www.uncitral.org/pdf/english/texts/sales/limit/limit-conv.pdf).
- <sup>36</sup> CISG Art. 6.
- <sup>37</sup> CISG Art. 74.
- <sup>38</sup> UCC §2-715.

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<sup>39</sup> CISG Art. 71.

<sup>40</sup> UCC § 2-610.

<sup>41</sup> CISG Art. 71.

<sup>42</sup> UCC § 2-610.

<sup>43</sup> CISG Art. 37.

<sup>44</sup> CISG Art. 48.

<sup>45</sup> UCC § 2-205.

<sup>46</sup> CISG Art. 16(2) (a).

<sup>47</sup> CISG Art. 16(2) (b).

<sup>48</sup> CISG Art. 25.

<sup>49</sup> CISG Art. 47.

<sup>50</sup> CISG Art. 26.

<sup>51</sup> CISG Art. 82, Art. 38.

<sup>52</sup> CISG Art. 73.

<sup>53</sup> CISG Art. 7 (2).

<sup>54</sup> CISG Art. 78

<sup>55</sup> CISG Art. 84.

<sup>56</sup> 71 F.3d 1024 (2nd Cir. 1995).

<sup>57</sup> *Delchi Carrier S.p.A. v. Rotorex Corp.*, WL 495787 (N.D.N.Y. 1994) (CLOUT Case No. 85). 71 F.3d 1024 (2nd Cir. 1995). See also V. Susanne Cook, *The U.N. Convention on Contracts for the International Sale of Goods: A Mandate to Abandon Legal Ethnocentricity*, 16 J.L. & Com. 257 (1997).

<sup>58</sup> UCC 2-201 (2).

<sup>59</sup> CISG Art. 1 (1).

<sup>60</sup> CISG Art. 11.

<sup>61</sup> CISG Art. 95.

<sup>62</sup> CISG Art. 11, 12, 96 Under Articles 12 where a party to the contract has its place of business in a Contracting State whose law requires written contracts and it has made an Article 96 declaration that Article 11 does not apply, then contracts must be in writing to be enforceable. Contracting

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States that have made this declaration include Argentina, Belarus, Chile, China, Hungary, Latvia, Lithuania, Paraguay, Russian Federation, and Ukraine.