

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1) (b) of article 1 of this Convention.

OVERVIEW

1. A State's article 95 declaration, made at the time of the deposit of its instrument of ratification, acceptance, approval or accession of the Convention, excludes the application of the Convention via article 1 (1) (b)—i.e., if the rules of private international law lead to the law of a Contracting State. Accordingly, if there is a dispute between a party from a Contracting State that has made an article 95 declaration and a party located in a non-contracting State, the applicable law is determined based on the domestic conflict of laws rules. The declaration does not impact the application of the Convention between two Contracting States under article 1 (1) (a). [See the discussion in the Digest for article 1 for decisions and awards applying article 1 (1) (b) where an article 95 reservation was not taken by any relevant contracting country.]

2. The following States have made an Article 95 declaration:¹ the People's Republic of China, Czech Republic, Saint Vincent and the Grenadines, Singapore,² Slovakia, and the United States of America.³

APPLICATION OF ARTICLE 95 RESERVATION

3. There are several decisions in which one party was from a Contracting State that has made an article 95 declaration and the other party was from a non-Contracting State. As such, the Convention was not applicable via article 1 (1) (a). In the majority of these cases, the court or tribunal applied domestic conflict of law rules leading to the application of domestic sales law rather than the CISG.⁴

4. In one case between parties from a Contracting State and a non-Contracting State⁵ the Court ignored that the Contracting State made an article 95 declaration and applied CISG pursuant to article 1 (1) (b).⁶

5. One court held that the Convention should not be applied in circumstances where the forum is in a non-Contracting State, the forum has determined that the applicable law is that of a Contracting State that has made an article 95 declaration, and the parties are from a non-Contracting and a Contracting State that has made an article 95 declaration.⁷

6. One court has indicated that an article 95 declaration would not preclude application of CISG where the parties agreed during the course of legal proceedings that the Convention would apply.⁸

Notes

¹ For information on reservations to the Convention made by Contracting States, see www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html.

² See Sub-section 3 (2) of the Singapore Sale of Goods (United Nations Convention) Act: "Subparagraph (1) (b) of Article 1 of the Convention shall not have the force of law in Singapore and accordingly the Convention will apply to contracts of sale of goods only between those parties whose places of business are in different states when the States are Contracting States."

³ Upon accession to the Convention in 1991 Canada made an article 95 declaration providing that its territorial unit of British Columbia would not be bound by Article 1(1) (b). In July 1992 this declaration was withdrawn.

⁴ Supreme People's Court, People's Republic of China, 20 July 1999 (Zheng Hong Li Ltd Hong Kong v. Jill Bert Ltd), (1998) *Jing Zhong Zi* No. 208 Civil Judgment, English translation available on the Internet at www.cisg.law.pace.edu (a contract between a buyer from Hong Kong and a seller from Switzerland designated the law of the People's Republic of China, which has made an article 95 declaration; although not expressly stated by the court, the Article 95 declaration likely was the basis for the application of domestic PRC Law on Economic Contracts); China International Economic and Trade Arbitration Commission, People's Republic of China, 24 December 2004, English translation available on the Internet at www.cisg.law.pace.edu (because the seller was not from a Contracting State (Japan at the time) and the buyer was from a State that made an article 95 declaration (the People's Republic of China), the tribunal applied the domestic contract law of the People's Republic of China); CLOUT case no. 616 [U.S. District Court, Southern District of Florida, United States, 22 November 2002 (*Impuls v. Psion-Teklogi*)], available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Western District of Washington, United States, 17 July 2006 (*Prime Start Ltd v. Maher Forest Products Ltd*), available on the Internet at www.cisg.law.pace.edu.

⁵ At the time the contract was concluded CISG was not in effect in Germany (the buyer's country).

⁶CLOUT case no. 49 [Oberlandesgericht Dusseldorf, Germany, 2 July 1993], English translation available on the Internet at www.cisg.law.pace.edu.

⁷Tokyo Chiho Saibansho, Japan, 19 March 1998, English translation available on the Internet at www.cisg.law.pace.edu.

⁸CLOUT case no. 280 [Oberlandesgericht Thuringer, Germany, 26 May 1998] (see full text of the decision), English translation available on the Internet at www.cisg.law.pace.edu.