

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG)

ADOPTION OF THE CISG

In the area of international sales transactions, one of the most important developments has been the adoption by member nations of the United Nations of the conventions on Contracts for the International Sale of Goods (CISG).

The CISG was finalized at the United Nations convention in Vienna on April 11, 1980. However, it has gone into effect at different times in each of the various member countries, depending on when the country acceded to the CISG. Thus, in New Zealand the CISG entered into force as of October 1, 1995, while in the United States the CISG took effect as of January 1, 1988.

Member countries are entitled to accede to the CISG with reservations, and many of them have chosen to exclude CISG provisions are those that allow a sale contract, offer, acceptance, other indication of intention, or modification or termination of a sale contract, to be made in any form other than in writing. For example, in Argentina, Chile, Hungary, and Russia, contracts for the international sale of goods should be written to be enforceable, despite the CISG provisions.

OBJECTIVES

The CISG was adopted by members of the United Nations with the following objectives:

1. To adopt uniform rules governing contracts for the international sale of goods
2. To adopt uniform rules that account for different social, economic, and legal systems
3. To contribute to the removal of legal barriers in international trade
4. To promote the development of international trade

APPLICATION

Unless contracting parties specifically excludes its application, the CISG may be applied to interpret contracts for the sale of goods between parties with business places in different countries, provided the countries are signatories to CISG or the law of a signatory country would be applied to determine the validity of a contract, the effect of a contract with respect to ownership of the goods sold, or the liability of a party for injury or death caused by the goods.

PROVISIONS

The CISG provisions primarily delineate the elements that must be present to prove formation of a contract for the sale of goods and supply implied terms if the parties have otherwise failed to state their obligations in full. A number of provisions also concern the application of various remedies for breach of contract, including specific performance, damages, modification or termination by agreement, avoidance of the contract, and mitigation of damages.

Examples of when the CISG provisions might be applied include the following :

1. A seller makes a proposal and the buyer accepts it. The seller claims that the proposal was not an offer, and therefore no contract was formed. The buyer claims that the acceptance created a contract. A court may apply the CISG, which provides that a proposal constitutes an offer if it is communicated to the buyer and it indicates the goods, fixes a means for determining the quantity and price, and expresses the seller's intent to be bound by the terms if the buyer accepts. Thus, the outcome of the case will depend on the content of the seller's proposal.
2. A seller makes an offer and the buyer agrees but only on condition that two of the contract provisions are modified in the buyer's favor. The buyer claims that a contract was formed, but the seller refuses to acknowledge the agreement. If a court applies the CISG to resolve the dispute, the seller would win because the CISG defines an acceptance as an assent made at the time the offer is still

- outstanding, communicated timely to the buyer, and made on the same terms as the offer without material modification.
3. The parties to a cross-border contract fail to specify a place of delivery. Reference may be made to the CISG to complete the contract terms.
 4. The seller is not obligated to insure the goods up to the point of delivery to the buyer. If the parties agree to application of the CISG, the seller must disclose before shipping sufficient information to allow the buyer to obtain insurance.
 5. A contract omits the time for delivery. Three months elapse, and the buyer sues for breach. If the CISG is applied, the result of the case will depend on what is considered to be a reasonable time for delivery after the contract was made.
 6. The seller ships goods that are not in conformance with the contract specifications. The buyer refuses the shipment and sues for breach. In applying the CISG, the court will consider whether the nonconformance was immaterial or material to the contract. If the nonconformance was minor and of no consequence to the value or quality of the goods, the contract is likely to be enforced.
 7. The contract requires that the buyer accept or refuse the goods on delivery. No period for inspection is given. The goods are delivered, stacked in the buyer's warehouse, and returned to the seller four days later. The seller sues for breach. Pursuant to the CISG, a reasonable inspection period is allowed before acceptance of the goods if the parties have not otherwise provided for inspection.
 8. A sale contract is signed, but no price for the goods is stated. The parties cannot later agree on a price, and the seller refuses to ship the goods claiming that no contract was in fact formed. The buyer sues for breach. The court applies the CISG and enforces the contract, implying a price at which similar goods would have been sold under comparable circumstances in the trade.

9. No provision is made in an international sales contract for the time at which the buyer is to remit payments for the goods. The seller demands payment on delivery, but the buyer accepts the delivery without remitting the payment. Under the CISG, the seller has a right to be paid at the time and place of the delivery if no other provision is made.

10. The parties to an international sales contract fail to provide for the transfer of the risk of loss between them. The goods are destroyed in transit, and the buyer sells for breach. A court may apply the CISG to establish when the risk passed from the seller to the buyer.

EXCLUSIONS

The mere fact that the parties to a cross-border transaction are located in countries that have acceded to the CISG does not mean that the CISG applies to the transaction. There are many exclusions, and the member countries themselves are permitted to limit the application of this treaty with respect to their own nationals. In this regard, you should consult a legal professional in your own country to find out if application in your country or in the foreign trader's country has been limited at the time of accession.

The CISG allows parties who would otherwise be subject to its provisions to opt out. Thus, parties may restrict the application of the CISG to any particular contract or may eliminate its application completely. To invoke this exclusion, the parties must expressly provide in writing that the CISG will not apply or will apply in limited terms.

Finally, the CISG does not apply to a number of contracts for sale even if the parties are located in different member states. Specifically, the CISG is inapplicable to contracts for the following:

1. The sale of goods for personal, family, or household use, unless the seller did not know or have reason to know that the goods were bought for this use,

2. The sale of goods that are to be made substantially from materials supplied by the buyer,
3. An obligation that is primarily for the supply of labor or other services,
4. A sale by auction
5. A sale pursuant to a legal remedy, such as execution or foreclosure,
6. The sale of stocks, share, investment securities, negotiable instruments, or money,
7. The sale of ships, vessels, hovercraft, or aircraft,
8. The sale of electricity.