

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

What is CISG?

CISG is a multinational accord which establishes a set of civil code provisions, similar to and modeled on the U.S. Uniform Commercial Code, applicable to transactions for the sale of goods in international commerce. The United States and 60 other nations in Europe, Asia and Latin America have ratified and implemented the CISG. Text of CISG appears at 15 U.S.C.A. Appendix.

When Does CISG Apply?

Article 1 - CISG applies to sales agreements: (a) between parties both from Contracting States; or (b) when rules of private international law lead to the application of the laws of a Contracting State (*e.g.*, when one party is from a Contracting State and that State's law applies).

Per Art. 95, the United States has "opted out" of Art. 1(b); U.S. view is that CISG does not apply to agreement between U.S. party and party from non-Contracting State. (Note German view that where a State has "opted out", CISG does not apply even between parties from two Contracting States.)

CISG art. 10(a) - If party has more than one place of business, the place with the closest relationship to the contract and its performance controls.

Note on CISG, like UCC - Are you dealing with sale of goods?

Effect of Choice of Law Clauses in International Sales Contracts

Choice of U.S. law, or law of a particular U.S. state, can result in application of the CISG, because U.S. has ratified the CISG Convention.

Statement that "CISG shall not apply" may result in application of pre-UCC state law.

Selection of UCC over CISG must be expressly stated in contract.

Effects of CISG vs. UCC and Other U.S. Law

Contract Formation

UCC 2-207(1) - Acceptance occurs even if it states terms “additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms”. UCC 2-207(2) - Additional terms are deemed “proposals for addition to the contract”, and are deemed accepted unless: (a) offer limits acceptance to its terms; (b) they materially alter it; or (c) notification of objection is given within a reasonable time.

CISG Art. 19(1) - Any acceptance containing “material” additions or modifications of original offer terms will operate as a rejection and counteroffer. Art. 18(1) - Other party’s silence upon receipt of such counteroffer is not an acceptance.

Note: CISG tends to treat advertisements as offers which can be accepted.

Contract Interpretation

CISG allows consideration of parties' statements that U.S. parol evidence rule would bar.

Warranties

UCC 2-314: Implied Warranty of Merchantability. UCC 2-315: Implied Warranty of Fitness for Purpose - Applies where Seller had reason to know specific purpose of Buyer. UCC 2-316: Exclusion or Modification of Warranties - Seller may make “reasonable” exclusions, if language mentions “merchantability”, or may Seller may expressly exclude all warranties, *e.g.*, “as is”.

CISG Arts. 35 and 36 – U.S.-style disclaimers of warranties (UCC Art. 2-316) will not necessarily work. Disclaimer is permitted under CISG, but different language is required to match the CISG’s description of the code obligations being disclaimed (re: description of goods and expected use).

Passage of Title and Risk of Loss

CISG Arts. 31 and 67 - Risk of loss passes when goods handed over to first carrier - may differ from UCC or INCOTERMS.

Remedies and Damages

UCC focuses more on Buyer's remedies; CISG provides more remedies for Seller than UCC.

Regarding consequential damages, UCC 2-714 and 715 and CISG Arts. 5 and 74 are similar, but "foreseeability" standards may be different.

Compare UCC 2-712 (cover) and 713 (measure of damages) with CISG Art. 75 and 76. UCC allows cover, or damages based on market price when Buyer "learned of" Seller's breach. CISG Art. 75 permits damages based on "price of the substitute transaction" if Buyer purchases goods "within a reasonable time".

Force Majeure

CISG Art. 79 - Excuses performance where (i) impediment exists, (ii) it is beyond a party's control, and (iii) it was not reasonably foreseeable to the party. CISG Art. 79 excuses either party from liability for any aspect of its performance.

UCC 2-615 only states the Seller is excused from delay in delivery or non-delivery. However, UCC and U.S. common law addresses both impossibility and impracticability; CISG only addresses impossibility.

Statute of Limitations - 1980 Protocol to Convention on Limitation Periods

CISG imposes a 4-year limitation, which is shorter than many U.S. states' limitation period for written agreements. Art. 22 of 1980 Convention prohibits parties from contractually modifying this limitation period, except by written waiver of debtor during the limitation period.

Date of accrual of claims, tolling rules, effects of bankruptcy filing and other interpretations may be different than U.S. statutory or common law. Written acknowledgement of the debt by debtor during limitation period restarts the period.

Trial Procedure and Evidence

Parol evidence rule is not applicable with respect to contract formation issues under CISG. Also note - UCC case law is not *per se* applicable but may be cited as to interpretation of closely analogous CISG sections.

Resources for Coping with CISG

Best Internet Website: **<http://www.cisg.law.pace.edu>** - This has the complete text of CISG, with committee notes (like UCC), list of countries which have ratified CISG and any reservations to ratification (such as “opt out” under Art. 1(b)), and a list, analysis and full text of all published U.S. and foreign court opinions and some arbitral awards applying or interpreting CISG.

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