

A Brief Assessment on Whether the CISG Should be Part of English Law with Reference to Parts I and III of the CISG

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Abstract: This article briefly assesses whether the CISG should be part of English law with reference to Parts I and III of the CISG, hopefully providing some slight values for the development of the International Sale of Goods.

Keywords: CISG; English law; A breach of condition; Trade terms; Gaps; The interpretation of the CISG; A fundamental breach

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1 Introduction

Both English law and the CISG play vital roles in the International Sale of Goods. However, the CISG is not adopted by the United Kingdom till now in general. In relation to that, this article provides a brief assessment to discuss whether the CISG should be part of English law with reference to Parts I and III of the CISG. It begins with aspects of the CISG that are deemed to not to be ideal. This is followed by some possible benefits of adopting the convention. After that, adverse effects that adoption of the convention would have on the role of English law and English courts and arbitrators in international trade are analyzed. Finally, the conclusion is stated.

2 Aspects of the CISG that are deemed to not to be ideal

There are several aspects of the CISG that are deemed to not to be ideal as follow.

2.1 Failure to have an equivalent to the English “condition”

Under the CISG, there is not a provision stating “condition”. Only if there is a fundamental breach, the rejection of goods and termination of the contract are allowed in general. A fundamental breach can be understood as a situation where one party is substantially deprived of expected benefit under the contract by the other party who foresaw or has foreseen such detriment. However, there is an automatic right to reject goods and/or terminate the contract where there is a breach of “condition” in English law. “Condition” does not require whether the actual detriment is serious, and there is not a specific standard for the detriment. Apparently, English law tends to protect the buyer in comparison with the CISG. Consequently, perhaps for the buyer, on remedies for breach of the seller’s duties relating to the goods, English law is more appropriate for him compared to the CISG.

2.2 Difficulties over reliance on trade terms

Under the CISG, according to Article 9, “the parties are bound by any usage to which they have agreed”, especially trade terms such as c.i.f. and f.o.b. contracts. In comparison, English law does not rely on trade terms very much, because an increasing number of specific stipulations and cases regulate the International Sale of Goods in detail.

2.3 Gaps in relation to the rules on documents

Although there are gap-filling provisions of Article 7(2) under the CISG, the CISG provides limited details on documents in general. On remedies for documentary breaches in c.i.f. and f.o.b. contracts, the CISG is not clear. Article 7(2) only states that

when questions are not settled in the CISG but belong to the framework of it, general principles on which the CISG is based or the applicable national law can be used to settle them; of course, the former is given the priority. However, a lot of rules and cases in English law state duties relating to the documents and remedies for documentary breaches, whether in c.i.f. contracts or in f.o.b. contracts.

2.4 Uncertainty as to the interpretation of the CISG

Although Article 7 of the CISG states how to interpret the convention. However, in practice, a lot of judges are fond of interpreting the convention with the applicable national law instead of giving priority to the application of general principles from an international or unified perspective.

2.5 Failure to cover the passing of property and the validity of the contract

There are not any provisions dealing with the passing of property and the validity of the contract under the CISG according to Article 4 of the CISG.

3 Possible benefits of adopting the CISG

3.1 Areas where the CISG rules are arguably better

The CISG tends to provide an opportunity for the seller to cure the breach based on Article 37, 48, 34 of the CISG instead of granting the seller the automatic right of rejection of goods or termination of the contract no matter on any kind of breach, which is relatively more gentle than English law.

3.2 More general benefits

The CISG, one of the most acceptable conventions, has the same rules in the International Sale of Goods as trading partners due to its nature as a convention in general. In addition, it is relatively impartial and fair for both parties to adopt the convention which provides a neutral set of rules to settle disputes in international trade transactions, without favouring either side. Furthermore, in the CISG, party autonomy is reflected based on Article 6 of the CISG because the parties can select to not to apply the CISG to settle relevant disputes in the International Sale of Goods.

4 Adverse effects that adoption of the CISG would have on the role of English law and English courts and arbitrators in international trade

In general, the CISG provides uncertainty in international trade transactions. English law has its own certainty and uniqueness as benefits so that even minor wording changes in English law would deprive this long-established case law of its uniqueness and certainty on legal interpretation. If the CISG were adopted by the United Kingdom, the status of English law and the role of judges in English courts would apparently be weakened in the International Sale of Goods. Moreover, the number of international arbitrations coming to this country would decrease.

5 Conclusion

Whether the United Kingdom should adopt the CISG is still a controversial topic. There is no doubt that both English law and the CISG have strengths and weaknesses. However, for any State, maintaining its nature is the most significant. In the long term, it is of great importance to bring benefits to the healthy development of international trade transactions without violating the essence of English law. Therefore, in my opinion, the CISG should not be part of English law.

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