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INTERNATIONAL SALES CONTRACTS IN VIETNAM UNDER THE CISG: CONTRACT FORM, NON-CONFORMITY AND PRACTICAL REMEDIES

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ABSTRACT

The United Nations Convention on Contracts for the International Sale of Goods (CISG) has governed many qualifying cross-border sales involving Vietnamese businesses since its entry into force for Vietnam on 1 January 2017. This article examines the Convention's application, contract formation, conformity obligations, notice requirements and remedies, with special attention to Vietnam's declaration under Article 96 concerning freedom of form. The study distinguishes the Convention's rules from domestic commercial law and contractual choice-of-law arrangements, and analyses how unclear product specifications, inspection records and remedial notices can weaken contractual protection. It argues that Vietnam's participation in the CISG expands access to a shared framework but does not eliminate the need for disciplined drafting, documentary evidence and careful attention to the reservation. The article proposes practical guidance for contract clauses, delivery acceptance, notice of defects, mitigation and dispute-prevention practices, aiming to support predictable cross-border trading relationships.

Keyword: CISG; International sale of goods; Vietnam; Article 96 reservation; Non-conformity; Avoidance; Damages.

1. INTRODUCTION

International sales connect Vietnamese producers and importers to counterparties operating under different legal systems, languages and business customs. Disputes frequently arise over the content of delivery obligations, conformity of goods, payment and the consequences of delay. A uniform treaty can reduce uncertainty, but uniform text does not ensure that contracting parties understand or apply it consistently.

The CISG entered into force for Vietnam on 1 January 2017. The Convention provides a framework for many international sales of goods where the requirements of its scope provisions are met. It addresses contract formation, seller and buyer obligations and remedies, while leaving certain matters such as validity and effects on property in goods outside its primary scope. Parties should therefore resist treating the CISG as a complete code for every issue associated with an international sales transaction.

This article conducts doctrinal analysis of selected CISG provisions and compares their functions with commercial drafting practices. It emphasizes practical risks affecting Vietnamese enterprises, without inventing court decisions or transaction surveys. Particular attention is given to the Article 96 declaration, documentary conformity and the distinction between ordinary breach and fundamental breach.

2. APPLICATION OF THE CONVENTION AND VIETNAM'S DECLARATION

Article 1 of the CISG sets out the principal cross-border scope rules, while Article 6 permits parties to exclude or vary the effect of Convention provisions within its framework. Consequently, a choice of Vietnamese law or a general reference to international law should not be evaluated without asking whether the CISG is included as part of the applicable law. Clear contract language can avoid disputes over the parties' intentions.

Vietnam made the reservation permitted by Article 96, read together with Article 12. Accordingly, the Convention's provisions allowing freedom of form do not operate in the same way when a party has its place of business in Vietnam. The reservation does not establish a simplistic rule that every contract must take one uniform

paper format under all circumstances; the applicable formal requirements require a separate conflicts and domestic-law analysis. Still, traders should preserve written or legally recognized equivalent evidence of offers, acceptances and amendments.

The Convention also distinguishes the interpretation of statements and conduct from the interpretation of national statutes. Article 8 directs attention to actual intent where known or to the reasonable person's understanding in context; Article 9 recognizes relevant practices and usages. Documentary records of negotiation, specifications and prior dealings may therefore be important even when the final contract appears detailed.

3. DELIVERY OBLIGATIONS AND NON-CONFORMING GOODS

The seller must deliver goods and related documents in conformity with the Convention and the agreement. Article 35 makes agreed quantity, quality, description and packaging central. General descriptions such as 'export grade' are less effective than measurable criteria for composition, tolerances, temperature, shelf life and certification. A precise specification reduces later disputes about whether a defect existed at the relevant time.

Inspection and notice are critical. Articles 38 and 39 govern examination of goods and notice of lack of conformity, subject to their terms and exceptions. A buyer that merely complains that goods were unsatisfactory may fail to identify the nature of the alleged defect clearly enough. Effective notices should describe the goods, batch, symptoms, evidence and requested remedy, while preserving samples and communications. The timing analysis must reflect transport arrangements, reasonable examination opportunities and the applicable treaty requirements.

The buyer's duty to provide notice should not be isolated from the seller's knowledge and conduct. The CISG includes provisions that can affect the consequences of insufficient notice in particular circumstances. Parties should not rely on an oversimplified deadline instead of reading the relevant provisions together. A joint inspection protocol and agreed independent-testing method may prevent disputes over whether defects reflect manufacturing, transport or post-delivery handling.

4. REMEDIES, FUNDAMENTAL BREACH AND DAMAGES

The CISG offers a structured set of remedies including performance, repair or substitute delivery in appropriate circumstances, price reduction, damages and avoidance. The appropriate remedy depends on the contract, the type and seriousness of breach and the applicable treaty conditions. Article 25 defines fundamental breach in a manner that focuses on substantial deprivation and foreseeability; not every late delivery or defect automatically permits avoidance.

Damages under Article 74 relate to loss, including loss of profit, subject to the Convention's foreseeability framework. Article 77 requires reasonable mitigation of loss. These provisions create incentives for preserving invoices, replacement quotations, inspection reports and evidence of downstream contracts. A claimant should explain the causal chain rather than present a bare demand for full expected revenue.

Contractual risk allocation can complement the CISG. Parties may specify notice addresses, authorized inspectors, documentary standards, staged acceptance and remedial cooperation. International commercial terms, including appropriately incorporated Incoterms, can clarify delivery responsibilities but do not automatically settle every issue of breach or legal title. Provisions should be integrated rather than copied from unrelated templates.

5. PRACTICAL IMPLEMENTATION FOR VIETNAMESE TRADERS

Businesses should begin with an applicability checklist: parties' places of business, transaction type, exclusion clauses, governing-law terms and any relevant treaty declarations. Contract managers should then link the chosen delivery term to technical specifications, testing rules and realistic notice arrangements. Translating this analysis into operational steps helps bridge the gap between legal department drafting and warehouse-level performance.

The documentation chain should record quotation, acceptance, amendments, packing, shipment, inspection, arrival and complaint

handling. The objective is not to produce unnecessary paperwork but to make contractual events reconstructable. Businesses trading repeatedly can agree a master contract and order-confirmation protocol, provided that changes and accepted orders are recorded consistently with applicable formal requirements.

Training and accessible judicial or arbitral reasoning would improve interpretive consistency. Vietnamese practitioners can benefit from international CISG commentary and publicly reported decisions, but comparative decisions should be used as persuasive material rather than treated automatically as binding. A local repository of accurately translated decisions would support both legal education and dispute prevention.

6. CONCLUSION

Vietnam's accession to the CISG provides a shared legal language for qualifying cross-border sales. The Convention's practical value depends on understanding its scope, its relationship with domestic law and the special form-related implications of Vietnam's Article 96 declaration. It does not replace careful drafting or the preservation of commercial evidence.

The most useful improvements are operational: clear product specifications, explicit written order procedures, systematic examination, detailed defect notices and documented mitigation. Better interpretive guidance would reduce disputes while allowing the CISG to fulfill its central purpose of supporting predictable international trade.

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