

Issues in applying CISG in Japan (summary)

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In 2009, United Nations Convention on Contracts for the International Sale of Goods (CISG) came into force in Japan. This article provides an overview and examination of various issues which might occur when Japanese courts apply CISG.

The CISG provides in article 1 that “This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.”

It is arguable how we understand these provisions; i.e., what is the character of Article 1 (1) (a) and 1 (1) (b)? Is there any difference between them? How do these provisions function?

Firstly, this article examined the character of these provisions. I regard Article 1 (1) (a) as a provision which has a character of conflict-of-laws rule, which provides that CISG shall be a part of the applicable law irrespective of whether the applicable law to the contract in question is the law of the contracting State or not. On the other hand, from my point of view, Article 1 (1) (b) is not a conflict-of-laws rule. This is because this provision only lays down that, unless the parties agrees otherwise, CISG shall not be excluded from the content of applicable law. Based on this interpretation, in Article 1 (1) (b), the CISG is applied by the court of Contracting State as a (foreign) applicable law, not as its own law.

Secondly, this article focused on the issue of how the reservation under Article 95 functions. It is disputable whether CISG is to be applied in particular when the non-reservation contracting state's court applies the 95 reservation state's law as an applicable one and the 95 reservation state's court applies the non-reservation contracting state's law as the applicable one. As to the former case, this article agrees with the opinion that CISG shall not apply. My view is, as stated above, that CISG is applied as a part of foreign applicable law which contains the 95 reservation. However, in the latter case CISG should be applied because the 95 reservation declared by the forum state has no effect on the content of applicable law.

Lastly, this article dealt with the issue concerning the effect of CISG on international jurisdiction of Japanese courts. The government of Japan is now amending the Code of Civil Procedure to draft new rules of international jurisdiction. In the new draft, there is a provision admitting Japanese courts to have jurisdiction when the obligation of contracts was or shall be performed in Japan, according to the parties' agreement or their choice of law. The question arises whether there is any room for CISG to play an important role in deciding "the place of performance" in a jurisdictional meaning in Japan. In this article, I concluded that there is almost no room for CISG in this context.