

## BOOK REVIEW

THE CONVENTION FOR THE INTERNATIONAL SALE OF GOODS: A HANDBOOK OF BASIC MATERIALS, D. Magraw & R. Kathrein, Editors, American Bar Association Publication, Section of International Law and Practice, (2d ed. 1990).

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Imported oil is, and will likely continue to be, an integral part of United States energy supply, with imports last year in the 7.9 million barrel range. Natural gas imports continue to increase—last year the United States purchased 143 (Bcf) of Canadian gas. The long-dormant LNG trade stirred, with imports from Algeria into two United States terminals; the long-running exports of LNG from Alaska to Japan continued; and serious discussions involving Nigerian LNG resumed. Uranium was imported from Australia, Canada and other countries. United States energy companies bought and sold fuels, equipment and services internationally. Therefore, to be an energy lawyer is increasingly to have some contact with international contracts.

Without a framework of “neutral” laws, international sales contracts can be drafting nightmares. The drafter has to consider whether trade usage common in domestic contracts translates to the same concept abroad; consider what impact the nuances of the foreign state’s commercial law will have on the interpretation and the enforceability of clauses that are familiar and effective in domestic contracts; and a host of other questions. Uncertainty can make parties so wary of international contracting that participation in the international market may be regarded with trepidation.

The United Nations Convention on Contracts for the International Sale of Goods (Convention), which became part of American law on January 1, 1988, brings a welcome aura of familiarity to this process. The Convention automatically applies new, international, legal rules to contracts, for the sale of goods, between parties who have places of business in countries that have ratified the convention, unless these parties “opt out” of the Convention. Familiarity with the Convention, therefore, will become increasingly important as most of the United States’ major trading partners are expected to ratify the Convention.<sup>1</sup> The American Bar Association Section of International Law and Practice has published a second edition of its extremely useful book *The Convention for the International Sale of Goods: Handbook of Basic Materials (Handbook)* which relates to the Convention.

The *Handbook* contains the official United Nations text of the Conven-

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1. Present signatories include, United States, Argen., Austl., Aus., Bulgaria, Byelorussian S.S.R., Czech., Chile, China, Den., Egypt, Germany, Fin., Fr., Hung., Italy, Iraq, Lesotho, Mex., Nor., Spain, Swed., Switz., Syria, Ukrainian S.S.R., USSR, Yugo. and Zambia.

tion. It also contains the United States legislative history of the Senate ratification of the Convention, the United Nations Commission on International Trade Law (UNCITRAL) Secretariat's Commentary on the Draft Convention and an extremely useful bibliography of commentaries. The *Handbook* also features a brief, lucid and comprehensive introduction by the co-editors, explaining the background, rules of interpretation and key points of the Convention.

The Convention is the product of an international conference held in 1980 to provide a uniform set of rules governing contracts for the international sale of goods.<sup>2</sup> It provides agreed-upon substantive rules—similar to the concept and approach of Article Two of the Uniform Commercial Code—to govern the formation of international sales contracts and the rights and obligations of the buyer and seller.

The Convention codifies international private law by including elements from both the common law and civil law traditions, delicately balancing the interests of buyers and sellers from all countries. The Convention provides an excellent planning tool for American companies and their legal counsel. No longer will they have to negotiate over which country's law will apply. The Convention offers a readily available compromise.

The Convention has four principal parts. Part I describes when the Convention applies and provides rules of construction to aid in interpreting its terms. Part II deals with issues of contract formation. Part III sets out the substantive rights and obligations of the parties to a sales contract. Part IV describes how countries may adhere to the Convention.

The Convention exists to facilitate agreements, not to dictate their terms. When a sales contract deviates from any provision of the Convention, the contract controls, preserving the autonomy of the parties to tailor a contract that will meet their needs. Its role is to augment and support the negotiated terms of an international sales agreement, and to provide answers for problems that the parties failed to anticipate. Issues of public policy, such as the validity of contractual provisions, are left to domestic law.

Of course, the Convention does not solve all the problems of international sales transactions. Critics point out that its automatic application is likely to mean that all but the largest companies will be brought unknowingly within the scope of the Convention. Learning the new rules can be difficult. Businesses that use standard form agreements in international transactions should compare their documents with the Convention's terms to decide whether they should exercise the right to opt out of some or all of the Convention's provisions. At the very least, the Convention provides a checklist of international contractual issues that traders should consider covering in their contracts.

The Convention permits the busy practitioner to refer to a single, unified body of law and avoid nearly all of the conflicts-of-law questions that ordina-

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2. As the volume notes, not all international transactions are governed by the Convention. Sales of electricity are excluded from the Convention, as are consumer transactions, sales of stocks, shares, investment securities, negotiable instruments and money. The Convention also excludes from its coverage issues concerning the validity of the contract, ownership claims of third parties, and liability claims for death or personal injury.

rily would have complicated his or her analysis of the case. This is by far the greatest advantage of the Convention. By providing a new degree of certainty concerning the law governing the basic legal transactions of international trade, the Convention should make the negotiation of international sales agreements and the resolution of legal disputes easier. The Second Edition of the *Handbook* is a "must-have" addition to the libraries of those who deal with international sales of goods.