

THE EXPORT OF IOWA PRODUCTS AND THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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I. INTRODUCTION

The 1980 United Nations Convention on Contracts for the International Sale of Goods¹ ("CISG") unifies the law for international sales as Article 2 of the Uniform Commercial Code² ("U.C.C.") unifies the law for domestic sales.³ When a contract for the international sale of goods does not specify which rule of law applies, the CISG provides uniform rules to govern the questions that arise in making and performing the contract.⁴

An increasing number of countries are accepting the CISG. On January 1, 1988, the CISG entered into force⁵ between the United States and Argentina, Egypt, France, Hungary, Italy, Lesotho, People's Republic of China, Syria, Yugoslavia, and Zambia.⁶ The CISG entered into force between the United States and Austria, Finland, Sweden, and Mexico on January 1, 1989.⁷ Effective April 1 and August 1, 1989, the CISG also entered into force between the United States and Australia and Norway, respectively.⁸ Several other countries are expected to become parties to the CISG in the near future.⁹ The United Kingdom and other European countries probably will de-

1. The CISG is also known as the 1980 Vienna Convention. SECTION ON BUSINESS LAW, INTERNATIONAL BAR ASSOCIATION, *United Nations Convention on Contracts for the International Sale of Goods*, 16 INT'L BUS. LAW. 479 (Dec. 1988).

2. See U.C.C. §§ 2-101 to 2-725 (1989); IOWA CODE §§ 554.2101-2725 (1989).

3. A.B.A. SEC. OF INT'L LAW & PRAC., *THE CONVENTION FOR THE INTERNATIONAL SALE OF GOODS: A HANDBOOK OF BASIC MATERIALS* 71 (R. Kathrein & D. Magraw eds. 1987) (reprinting Letter of Transmittal from President Ronald Reagan to the Senate of the United States (Sept. 21, 1983)) [hereinafter "HANDBOOK"].

4. HANDBOOK, *supra* note 3, at 72 (reprinting Letter of Submittal from Secretary of State George P. Shultz to President Ronald Reagan (Aug. 30, 1983)).

5. Kathrein & Magraw, *Preface* to HANDBOOK, *supra* note 3, at vii.

6. HANDBOOK, *supra* note 3, at 65 (reprinting Table 1: Parties and Accompanying Reservations or Declarations, (May 1987)).

7. Pfund, *International Unification of Private Law: A Report on U.S. Participation—1987-88*, 22 INT'L LAW. 1157, 1158 (1988). Peter H. Pfund is Assistant Legal Advisor for Private International Law, U.S. Department of State, Washington, D.C.

8. Pfund, *supra* note 7, at 1158; see also Editor's Note, *The U.N. Convention on Contracts for the International Sale of Goods: An Update*, 23 INT'L LAW. 797, 797-98 (1989).

9. Pfund, *supra* note 7, at 1158.

nounce an earlier treaty to which they are parties, and become parties to the CISG.¹⁰ Japanese industry has also made favorable comments about the CISG.¹¹ Thus, it appears the CISG, the culmination of a half century of work, will provide a widely accepted legal basis for international trade.¹²

A basic understanding of the CISG is essential for the Iowa practitioner due to increased exporting of agricultural and manufactured products from the state.¹³ Additionally, the Iowa practitioner may encounter the CISG as representatives of the Hebei Import and Export Company from the People's Republic of China work with officials of the International Trade Center of Iowa.¹⁴ Thus, the purpose of this Article is to provide a practical guide to the CISG, which is now effective as domestic law in Iowa and the United States.¹⁵

The CISG is organized in four parts.¹⁶ Part I delineates the sphere of application and general provisions of the CISG.¹⁷ Part II covers the forma-

10. Kantor, *The Convention on Contracts for the International Sale of Goods: An International Sales Law*, 1 INT'L L. PRACTICUM 8, 8 (1988).

11. *Id.*

12. J. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* 47 (1982). This book contains the standard English language work on the CISG. John O. Honnold is Schader Professor of Commercial Law, University of Pennsylvania, and was Goodhart Professor of the Science of Law, University of Cambridge, England, from 1982 to 1983.

13. In 1970 the value of Iowa agricultural exports was \$515,100,000. By 1984 the value of Iowa agricultural exports had increased to \$2,469,000,000, or 7.92% of the U.S. share, second only to California with agricultural exports of \$2,701,100,000. In 1960 the value of Iowa manufactured exports was \$211,400,000. By 1983 the value of Iowa manufactured exports had increased to \$1,806,600,000. IOWA DEPT OF ECONOMIC DEV., 1987 STATISTICAL PROFILE OF IOWA 61-66. Although Iowa ranks 25th in population, the state ranks 10th in total value of export shipments. IOWA DEPT OF ECONOMIC DEV., 1988-1989 DIRECTORY OF IOWA EXPORTERS 1. Additionally, a District Office of the United States and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, is located at the Federal Building in Des Moines. The International Trade Center of Iowa is located in Des Moines. There are five international trade clubs in Iowa: International Traders of Iowa in Des Moines; Siouxland International Trade Council in Sioux City; Northeast Iowa International Trade Council in Cedar Falls; International Trade Bureau in Cedar Rapids; and Iowa-Illinois International Trade Association in Davenport.

14. A Chinese Trade Office was opened in 1988 to research exporting Hebei-made products to Iowa and importing Iowa-made products to the People's Republic of China because the Province of Hebei and the State of Iowa are sister states. *Chinese Trade Office Opens*, INT'L TRADE CENTERS: IOWA (1988). This was the first trade office to be opened in Iowa by an organization whose country is a party to the CISG.

15. The CISG is self-executing and became effective as domestic law within the United States without the implementation of legislation. HANDBOOK, *supra* note 3, at 1.

16. HANDBOOK, *supra* note 3, at 28-61 (reprinting *United Nations Convention on Contracts for the International Sale of Goods*, U.N. Doc. A/Conf. 97/18 (1980)). This is the official United Nations text of the CISG in English as certified by the Secretary-General. For the official United Nations texts of the CISG in Arabic, Chinese, French, Russian, and Spanish, see HANDBOOK, *supra* note 3, at 169-246.

17. HANDBOOK, *supra* note 3, arts. 1-13, at 13; see *infra* notes 21-57 and accompanying

tion of the contract,¹⁸ and Part III pertains to the sale of goods.¹⁹ Although not discussed in this Article, Part IV contains ministerial provisions.²⁰ This Article follows the organization of the CISG.

II. PART I OF THE CISG: SPHERE OF APPLICATION AND GENERAL PROVISIONS

Part I provides rules that apply throughout the CISG.²¹ Within Part I, Chapter I defines the sphere of application of the Convention and Chapter II sets forth general provisions.²²

A. Chapter I: Sphere of Application

The CISG applies only if two requirements are met: (1) the seller and the buyer have their "places of business in different [s]tates," and (2) both states have adopted the CISG.²³ A federal or state court in Iowa applies the CISG only to an international sale of goods between a party whose place of business is Iowa and a party whose place of business is in a country that has adopted the CISG. Thus, the CISG currently applies between Iowa exporters of products and importers of those products in Argentina, Australia, Austria, Egypt, Finland, France, Hungary, Italy, Lesotho, Mexico, Norway, People's Republic of China, Syria, Sweden, Yugoslavia, and Zambia.

The CISG principally impacts international sales of commercial goods between parties in business.²⁴ The CISG excludes certain transactions including sales of consumer goods, sales by auction, and sales by execution.²⁵ The CISG also excludes the sales of certain goods, including stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft, and electricity.²⁶ The CISG covers international sales of commodities, foodstuffs, equipment, and other manufactured items, and thus may apply to such diverse transactions as heavy equipment sales, crude oil sales, trades on commodities exchanges, and development projects.²⁷ The CISG applies to Iowa exporters of grain, such as local or regional farmers'

text.

18. HANDBOOK, *supra* note 3, arts. 12-24, at 13; *see infra* notes 61-86 and accompanying text.

19. HANDBOOK, *supra* note 3, arts. 25-88, at 13; *see infra* notes 87-179 and accompanying text.

20. HANDBOOK, *supra* note 3, arts. 89-101.

21. HANDBOOK, *supra* note 3, at 75 (*reprinting* UNITED STATES DEP'T OF STATE, LEGAL ANALYSIS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980)).

22. *Id.*

23. HANDBOOK, *supra* note 3, art. 1(a), at 28, 76; J. HONNOLD, *supra* note 12, at 77-84.

24. HANDBOOK, *supra* note 3, art. 2, at 29, 76.

25. J. HONNOLD, *supra* note 12, at 85-89.

26. *Id.*

27. Kantor, *supra* note 10, at 10.

cooperatives banded together to directly export members' grain in order to bypass multinational grain merchandisers, and to Iowa exporters of agricultural equipment.

The CISG also applies to international sales contracts for the manufacture and production of goods, but does not apply to transactions in which the party receiving the finished product supplies "a substantial part" of the necessary materials.²⁸ The CISG also does not apply to "service" contracts in which the "supply of labor or other services" comprises a preponderant part of the contract.²⁹ Questions concerning the applicability of the CISG may arise in large international and construction works "where suppliers and their affiliates may simultaneously sell goods, provide engineering advice, act as technical consultants, engage in construction work, and purchase the resulting output."³⁰ Whether these different roles are combined in a single contract or separate contracts may determine the applicability of the CISG.³¹

The CISG applies only to "(1) 'the formation of the contract' " (Part II) and "(2) 'the rights and obligations of the seller and the buyer arising from such a contract' " (Part III).³² The CISG is not concerned with issues regarding "the validity of the contract or any of its provisions or of any usage" or "the effect which the contract may have on the property [title] in the goods sold."³³ Thus, the CISG applies to a contract that is invalid under Iowa law but valid under the law of the importer's country, if that country is a party to the CISG. Similarly, the CISG applies to a contract that does not divest title to goods sold in Iowa but divests title to the goods under the law of the importer's country, if that country is a party to the CISG.

The CISG "does not apply to the liability of the seller for death or personal injury caused by the goods," thus avoiding conflict with national law on product liability.³⁴ Contractual liability cannot, therefore, become the basis of tort liability. For example, the international sale contract for the export of Iowa-manufactured agricultural equipment cannot be the basis of tort liability in an importing country that is a party to the CISG if the agricultural equipment causes injury or death in that country.

Most importantly, the parties to an international sale of goods contract whose countries of place of business have adopted the CISG may exclude the CISG entirely or "vary the effect" of any of the CISG's provisions.³⁵ Thus, an Iowa exporter and an importer in a country that is a party to the

28. HANDBOOK, *supra* note 3, art. 3, at 29, 76; J. HONNOLD, *supra* note 12, at 91-93.

29. See *supra* note 28.

30. Kantor, *supra* note 10, at 12.

31. *Id.*

32. HANDBOOK, *supra* note 3, art. 4, at 29, 76-77; J. HONNOLD, *supra* note 12, at 94-99.

33. See *supra* note 32.

34. HANDBOOK, *supra* note 3, art. 5, at 30, 77; J. HONNOLD, *supra* note 12, at 100-04.

35. HANDBOOK, *supra* note 3, art. 6, at 30, 77; J. HONNOLD, *supra* note 12, at 105-12.

CISG may specifically contract out of it. Parties must be aware of this option when determining which law of what country will apply to their particular contract.

Three situations concerning the applicability of the CISG may arise.³⁶ First, the CISG applies if the international sales contract does not mention whether the CISG does or does not apply.³⁷ Second, if the international sales contract states the CISG does not apply but does not state which law applies, the CISG does not apply and the forum applies its own choice of law rules.³⁸ If the country whose law the forum selects has adopted the CISG, the forum presumably applies that country's domestic sales law and not that of the CISG.³⁹ Third, if the international sales contract states the CISG does not apply and further states which law applies, the CISG does not apply and the forum applies the sales law of the country agreed to by the parties and specified in the contract.⁴⁰ When the third alternative is desired, the following clause could be included in the international sale of goods contract:

The rights and obligations of the parties to this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather, these rights and obligations shall be governed by the law of the State of [Iowa] including its provisions of the Uniform Commercial Code [Iowa Code chapter 554].⁴¹

B. Chapter II: General Provisions

The interpretation of the CISG is subject to (a) the CISG's "international character" and (b) "the need to promote uniformity in its application."⁴² Subsection (b) is similar to U.C.C. § 1-102(2)(c), which states the purpose of the U.C.C. is to make the law uniform.⁴³ The interpretation of the CISG is also subject to "the observance of good faith in international trade."⁴⁴ This provision is narrower than U.C.C. § 1-203, which imposes the obligation of good faith in the performance or enforcement of every contract.⁴⁵ The goal in interpreting the CISG, however, is to strive for uniformity in all countries that are a party to the CISG. Thus, an Iowa federal or

36. HANDBOOK, *supra* note 3, at 94 (reprinting excerpts from *International Sales of Goods*, 1984: *Hearings on Treaty Doc. No. 98-9 Before the Comm. on Foreign Relations*, 98th Cong., 2d Sess. 98-837 (1984)).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. HANDBOOK, *supra* note 3, art. 7, at 30, 77-78; J. HONNOLD, *supra* note 12, at 113-35.

43. See *supra* note 44; see also IOWA CODE § 554.1102 (1989).

44. HANDBOOK, *supra* note 3, art. 7, at 30, 77-78; J. HONNOLD, *supra* note 12, at 123.

45. See also IOWA CODE § 554.1203 (1989).

state court may rely on a foreign court's interpretation and not necessarily on an American court's interpretation of the CISG. Foreign law may, therefore, set precedent in Iowa federal and state courts.

The CISG gives legal effect to the practices of the parties and to commercial usages,⁴⁶ much like U.C.C. § 1-205 gives effect to course of dealing and usage of trade.⁴⁷ The parties to an international sale of goods contract are bound by the "practices which they have established between themselves."⁴⁸ Unless the parties have agreed otherwise, effect is given to a trade usage "of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned."⁴⁹ This provision resembles the definition of usage of trade in U.C.C. § 1-205.⁵⁰ The goal in interpreting the CISG is to strive for uniformity and apply commercial concepts common to both buyer and seller, much like the *lex mercatoria*.

The CISG refers to a party's "place of business" in many instances⁵¹ and applies that place of business "which has the closest relationship to the contract and its performance."⁵² For example, assume Country A and the United States have adopted the CISG. Further assume that Company X in Country A sends agents to negotiate with Companies Y and Z in Iowa. The agents of Company X successfully negotiate two contracts in Iowa. One contract is for the sale of widgets manufactured in Country A by Company X to Company Y; the other is for the purchase of gadgets manufactured in Iowa by Company Z. The CISG *applies* because the places of business of Companies X and Y and Companies X and Z are different countries: Country A and the United States. This analysis applies to agents of the Hebei Import and Export Company of the People's Republic of China when they negotiate with Iowa businesses for the import to Iowa of Hebei products and the export to Hebei of Iowa products.

To vary this example, assume the same facts except Company X in Country A has a branch or subsidiary in the United States from which independent decisions regarding negotiations with Companies Y and Z in Iowa are made. The branch or subsidiary of Company X in the United States successfully negotiates the identical contracts with Companies Y and Z in Iowa. The CISG *does not apply* because the places of business of Companies X and Y and of Companies X and Z are the same country: The United States.

46. HANDBOOK, *supra* note 3, art. 9, at 31, 78-79; J. HONNOLD, *supra* note 12, at 144-49.

47. See also IOWA CODE § 554.1205 (1989).

48. HANDBOOK, *supra* note 3, art. 9, at 31, 78-79; J. HONNOLD, *supra* note 12, at 144-46.

49. See *supra* note 48.

50. See *supra* note 48.

51. HANDBOOK, *supra* note 3, arts. 1, 12, 20(2), 24, 31(c), 42(1)(b), 57(1)(a), 69, 96 at 57.

52. HANDBOOK, *supra* note 3, art. 10, at 31, 79; J. HONNOLD, *supra* note 12, at 150.

Contrary to U.C.C. § 2-201, the CISG rejects domestic requirements that a sales contract must be in writing.⁵³ The CISG provides, nevertheless, that countries may preserve their domestic requirement by declaration.⁵⁴ Argentina, Hungary, and the People's Republic of China have made such declarations.⁵⁵ The United States has not.⁵⁶ Consequently, an international sales contract between an Iowa exporter and an importer in a foreign country that is a party to the CISG need not be in writing, but the same contract must be in writing between an Iowa exporter and importers in Argentina, Hungary, and the People's Republic of China. This concept applies to contracts negotiated in Iowa with agents of the Hebei Import and Export Company.

The CISG also recognizes that a telegram and a telex constitute a "writing."⁵⁷ Strictly construing the CISG, a contract *telegraphed* from Iowa to Argentina, Hungary, or the People's Republic of China, or to any of the thirteen other countries that are a party to the CISG, is a "writing" and therefore constitutes a valid international sales contract. A contract *telexed* from Iowa to the same countries is a "writing" and therefore constitutes a valid international sales contract. A contract *telecopied (faxed)* from Iowa to Argentina, Hungary, or the People's Republic of China, however, is *not* a "writing" and therefore does not constitute a valid contract. The same contract telecopied (faxed) to any of the thirteen other countries that are a party to the CISG constitutes a valid contract because a contract need not be in writing to be valid. Whether the technical difference among telegrams, telexes, and telecopies (faxes) is important in applying the CISG remains to be seen. With the increasing business use of telecopiers (fax machines), however, courts would be hard-pressed not to consider such electronic transmissions a "writing" within the meaning of the CISG. Otherwise, a photocopy mailed to a party would be a "writing," but a photocopy telecopied to the same party would not be a "writing."

III. PART II OF THE CISG: FORMATION OF THE CONTRACT

Part II of the CISG sets forth rules that apply to the offer and acceptance of an international sale of goods contract.⁵⁸ Even though Part II is subject to Part I on the sphere of application and general provisions, Part II is independent of Part III on the sales of goods.⁵⁹ Part IV permits a country to

53. HANDBOOK, *supra* note 3, art. 11, at 31, 79; J. HONNOLD, *supra* note 12, at 152-53; see also IOWA CODE § 554.2201 (1989).

54. HANDBOOK, *supra* note 3, art. 12, at 31, 79-80; J. HONNOLD, *supra* note 12, at 155-56.

55. HANDBOOK, *supra* note 3, at 65 (reprinting Table 1: Parties and Accompanying Reservations or Declarations, to May 1987)).

56. *Id.*

57. HANDBOOK, *supra* note 3, art. 13, at 31, 80; J. HONNOLD, *supra* note 12, at 157.

58. HANDBOOK, *supra* note 3, at 80.

59. *Id.*

declare that it will not be bound by the provisions of Part II.⁶⁰ Hungary, Finland, Norway, and Sweden have each made such declarations.⁶¹

The CISG sets forth certain criteria for an offer.⁶² If a proposal is not "addressed to one or more specific persons," the proposal is not an offer "unless the contrary is clearly indicated by the person making the proposal."⁶³ "Hence, publications such as advertising materials, price lists, and catalogs, are not considered legal offers" and are "merely invitations to make offers unless the contrary is indicated by the offeror."⁶⁴ A proposal is sufficiently definite if "it indicates the goods to be sold and expressly or implicitly fixes or makes provisions for determining the quantity and the price."⁶⁵ U.C.C. § 2-305 also allows the conclusion of a contract even though the price is not settled.⁶⁶

An offeror may withdraw an offer if the withdrawal reaches the offeree before or at the same time as the offer.⁶⁷ An offeror may revoke an offer if the revocation reaches the offeree before the offeree has dispatched an acceptance, unless the offeror has stated a fixed time for acceptance or it was reasonable for the offeree to rely on the offer as being irrevocable.⁶⁸ This provision may trap the Iowa exporter who "sets forth time limits for acceptance of . . . offers without, at the same time, intending that [the] offer should become irrevocable for that period of time."⁶⁹ Last, an offeree may terminate an offer when the termination reaches the offeror.⁷⁰

The CISG also sets forth certain criteria for an acceptance.⁷¹ An offeree's dispatch of an acceptance is effective when it reaches the offeror.⁷² Under some circumstances, an offeree may accept an offer by performing an act the offeror requests, such as dispatching the goods.⁷³ Similarly, U.C.C. § 2-206(1)(b) deems the prompt shipment of conforming goods to be an acceptance.⁷⁴ An offeree who dispatches an acceptance with modifications has

60. *Id.*

61. HANDBOOK, *supra* note 3, at 65-67 (reprinting Table 1: Parties and Accompanying Reservations or Declarations, to May 1987; Table 2: Signatories and Accompanying Indications of Reservations, to May 1987).

62. HANDBOOK, *supra* note 3, art. 14, at 32, 80-81; J. HONNOLD, *supra* note 12, at 160-64.

63. *See supra* note 62.

64. Friedman, *Formation of the Sale of Goods Contract: Some Practical Considerations*, 1 INT'L L. PRACTICUM 4, 4 (1988).

65. *Id.*

66. *See also* IOWA CODE § 554.2305 (1989).

67. HANDBOOK, *supra* note 3, art. 15, at 32, 81; J. HONNOLD, *supra* note 12, at 165-66.

68. HANDBOOK, *supra* note 3, art. 16, at 32, 81; J. HONNOLD, *supra* note 12, at 167-76.

69. Friedman, *supra* note 64, at 5.

70. HANDBOOK, *supra* note 3, art. 17, at 33, 81; J. HONNOLD, *supra* note 12, at 177-79.

71. HANDBOOK, *supra* note 3, art. 18, at 33, 81; J. HONNOLD, *supra* note 12, at 180-87.

72. J. HONNOLD, *supra* note 12, at 180-87.

73. *See supra* note 71.

74. *See supra* note 71; *see also* IOWA CODE § 554.2206(1)(b) (1987).

dispatched a counteroffer under the CISG.⁷⁵ This CISG provision is contrary to U.C.C. § 2-207, which allows additional terms in the acceptance, and avoids problems that have arisen under its application.⁷⁶ A counteroffer arises from the routine exchange of the buyer's printed purchase order and the seller's printed acknowledgement of sale form.⁷⁷ The offeror's time limits for acceptance begin to run from the moment a telegram is handed in for dispatch or from the date shown on the letter, and holidays or nonbusiness days are not excluded from the calculation.⁷⁸ A late period for acceptance is effective if the offeror so informs the offeree.⁷⁹ An offeree may withdraw an acceptance if the withdrawal reaches the offeror before or at the same time the acceptance would have been effective.⁸⁰

The CISG provides a contract is concluded at the moment an acceptance becomes effective.⁸¹ Any "indication of intention 'reaches' the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address, or if he does not have a place of business or mailing address, to his habitual residence."⁸² An important difference between the CISG and Iowa law in the formation of a contract is that the CISG follows the civil law theory of "receipt" for determining when offers and acceptances are effective, while Iowa law follows the common law theory of "dispatch" (the mailbox rule).⁸³

IV. PART III OF THE CISG: SALE OF GOODS

Part III of the CISG provides rules that apply to the sale of goods when an enforceable international sales contract has been formed.⁸⁴ Part III also governs the rights and obligations of the seller and buyer.⁸⁵ Chapter I sets forth general provisions applicable throughout Part III.⁸⁶ Chapter II sets forth the obligations of the seller,⁸⁷ including delivery of the goods and handing over of documents,⁸⁸ conformity of the goods and third-party claims,⁸⁹ and remedies for breach of contract by the seller.⁹⁰ Chapter III sets

75. HANDBOOK, *supra* note 3, art. 19, at 33, 81-82; J. HONNOLD, *supra* note 12, at 188-96; see also IOWA CODE § 554.2207 (1989).

76. See *supra* note 75.

77. See *supra* note 75.

78. HANDBOOK, *supra* note 3, art. 20, at 34, 82; J. HONNOLD, *supra* note 12, at 197-98.

79. HANDBOOK, *supra* note 3, art. 20, at 34, 82; J. HONNOLD, *supra* note 12, at 199-203.

80. HANDBOOK, *supra* note 3, art. 22, at 34, 82; J. HONNOLD, *supra* note 12, at 204.

81. HANDBOOK, *supra* note 3, art. 23, at 34, 82; J. HONNOLD, *supra* note 12, at 205.

82. HANDBOOK, *supra* note 3, art. 24, at 35, 82; J. HONNOLD, *supra* note 12, at 206-07.

83. Kanton, *supra* note 10, at 12.

84. HANDBOOK, *supra* note 3, at 82.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 36-37.

89. *Id.* at 38-41.

forth the obligations of the buyer,⁹¹ such as the payment of the price⁹² and taking delivery,⁹³ and establishes remedies for breach of contract by the buyer.⁹⁴ Chapter IV sets forth rules governing the passing of risk.⁹⁵ Chapter V sets forth provisions common to the obligations of the seller and buyer,⁹⁶ including anticipatory breach and installment contracts,⁹⁷ damages,⁹⁸ interest,⁹⁹ exemptions,¹⁰⁰ effects of avoidance,¹⁰¹ and preservation of the goods.¹⁰²

A. Chapter I: General Provisions

"A breach of contract is fundamental if it results in such detriment to the other party so as to substantially deprive him of what he is entitled to expect under the contract."¹⁰³ This CISG provision is similar to U.C.C. § 2-612(2), which allows the buyer to reject an installment "if the nonconformity substantially impairs the value of that installment," and U.C.C. § 2-612(3), which declares a breach of the whole contract where nonconformity of one or more installments "substantially impairs the value of the whole contract."¹⁰⁴ To illustrate, if Iowa corn is sold, but Iowa soybeans are exported, the importer is obviously deprived of what he is entitled to expect under the contract—Iowa corn—and the contract is breached. Likewise, if Iowa corn is sold and Iowa corn is exported, but #2 yellow corn was sold and #3 yellow corn is exported, the importer may be deprived of what he is entitled to expect under the contract—#2 yellow corn—and the contract may be breached.

"[A]voidance of the contract is effective only if made by notice to the other party."¹⁰⁵ This CISG provision is similar to the timely notification requirements for rejection and revocation under U.C.C. §§ 2-602(1) and 2-608(2).¹⁰⁶ The Iowa practitioner must note, however, that notice is effective under the civil law theory of "receipt" and not under the common law theory of "dispatch."

90. *Id.* at 41-44.

91. *Id.* at 82.

92. *Id.* at 44-45.

93. *Id.* at 45.

94. *Id.* at 46-47.

95. *Id.* at 48-49, 82.

96. *Id.*

97. *Id.* at 49-50.

98. *Id.* at 50-51.

99. *Id.* at 51.

100. *Id.* at 52.

101. *Id.* at 52-53.

102. *Id.* at 54-55.

103. *Id.* at 35, 83; J. HONNOLD, *supra* note 12, at 211-16.

104. *See supra* note 103; *see also* IOWA CODE § 554.2612 (1989).

105. HANDBOOK, *supra* note 3, art. 26, at 35, 83; J. HONNOLD, *supra* note 12, at 217-18.

106. *See supra* note 105; *see also* IOWA CODE §§ 544.2601(1), .2608(2) (1989).

A party satisfies the duty to notify if the communication is dispatched "by means appropriate to the circumstances."¹⁰⁷ Thus, "a delay or error in the transmission of the communication or its failure to arrive does not deprive the party serving notice of the right to rely on the communication."¹⁰⁸ Similarly, U.C.C. § 1-201(26) declares that "[a] person 'notifies' or 'gives' a notice . . . by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it."¹⁰⁹ Strictly construing the CISG, an Iowa exporter may rely on a delayed or undelivered telegram or telex to an importer in Argentina, Hungary, or the People's Republic of China, because a telegram or a telex is a "writing." An Iowa exporter, however, cannot rely on a delayed or undelivered telecopy (fax) to an importer in those same countries because a telecopy (fax) is technically not a "writing" under the CISG. As previously discussed, the author doubts that courts would not construe a telecopy (fax) to be a "writing."

Rules of national law withholding specific performance prevail over the wider scale of specific performance granted under the CISG.¹¹⁰ Thus, state and federal courts in Iowa would continue to be limited to the specific performance remedy provided in U.C.C. § 2-716.¹¹¹

Last, the CISG recognizes sales contracts' provisions that require the contracts to be modified in writing.¹¹² U.C.C. § 2-209(2) also allows agreements to exclude modification except by a signed writing.¹¹³ It is an understatement to say it is risky not to take advantage of such a provision to effectuate the modification, no matter how cumbersome it may be, to avoid future legal problems.

B. Chapter II: Obligations of the Seller

"The seller must deliver the goods, hand over any documents relating to them and transfer the property [title] in the goods, as required by the contract . . . and the CISG."¹¹⁴

1. Section I: Delivery of the Goods and Handing Over of Documents

"If the seller is not bound to deliver the goods at any other particular place," then the seller must hand the goods over to the first carrier if the contract includes carriage of the goods, or the seller must place the goods at

107. HANDBOOK, *supra* note 3, art. 27, at 35, 84; J. HONNOLD, *supra* note 12, at 219-20.

108. *See supra* note 107.

109. *See supra* note 107; *see also* IOWA CODE § 554.1201(26) (1989).

110. HANDBOOK, *supra* note 3, art. 28, at 36, 84; J. HONNOLD, *supra* note 12, at 221-28.

111. *See supra* note 110; *see also* IOWA CODE § 554.2716 (1989).

112. HANDBOOK, *supra* note 3, art. 29, at 36, 84; J. HONNOLD, *supra* note 12, at 229-32.

113. *See supra* note 112; *see also* IOWA CODE § 554.2209(2) (1989).

114. HANDBOOK, *supra* note 3, art. 30, at 39, 84-85; J. HONNOLD, *supra* note 12, at 234.

the buyer's disposal at the seller's place of business if the contract does not include carriage of the goods.¹¹⁵ If the contract is silent with respect to shipping arrangements, the CISG provides rules similar to those of U.C.C. §§ 2-504 (shipment by seller), 2-311 (cooperation respecting performance), 2-319(1)(c) (in certain circumstances seller must load the goods on board), and 2-319(3) (buyer must give directions for delivery).¹¹⁶ Of course, the seller must deliver the goods by the date indicated in the contract, and if the seller is bound to hand over documents, such as a bill of lading, the seller must do so at the time and place the contract requires.¹¹⁷

2. Section II: Conformity of the Goods and Third Party Claims

Under the CISG, the seller must supply the goods of the quality provided in the contract and the goods must be fit for particular purposes and conform as the seller represents,¹¹⁸ as U.C.C. §§ 2-314(2)(c), 2-315, 2-313(1)(c), 2-314(2)(e), and 2-316(3)(b) also require.¹¹⁹ To illustrate, if #2 yellow corn is sold, #2 yellow corn must be delivered. However, the seller is not responsible for defects resulting from transit casualties that the buyer has assumed under the contract or the CISG's rules.¹²⁰ Thus, if #2 yellow corn is sold, #2 yellow corn must be delivered, subject to the natural spoilage and shrinkage that occurs during transit. The seller may remedy defects up to the date of delivery and prevent "avoidance" of the contract, which in common law is "rejection," as dealt with by U.C.C. § 2-608(1).¹²¹ The "cure" provisions for the buyer are similar to those of U.C.C. § 2-508(1), which allow the seller to seasonably notify the buyer of his intention to cure and make a conforming delivery.¹²² The buyer must examine the goods within as short a period of time as practicable.¹²³ The right to rely on lack of conformity is lost if notice is not given within two years from the date the goods are handed over to the buyer.¹²⁴ The seller may not rely on the buyer's examination of goods and notice of the lack of conformity if the lack of conformity

115. HANDBOOK, *supra* note 3, art. 31, at 36-37, 84-85; J. HONNOLD, *supra* note 12, at 235-41.

116. HANDBOOK, *supra* note 3, art. 32, at 37, 85; J. HONNOLD, *supra* note 12, at 242-44; see also IOWA CODE §§ 554.2504, .2311, .2319(1)(c), .2319(3) (1989).

117. HANDBOOK, *supra* note 3, art. 34, at 37, 85; J. HONNOLD, *supra* note 12, at 246-47.

118. HANDBOOK, *supra* note 3, art. 35, at 38, 86; J. HONNOLD, *supra* note 12, at 249-66.

119. See *supra* note 118, see also IOWA CODE §§ 554.2314(2)(c), .2315, .2313(1)(c), .2314(2)(3), .2316(3)(b) (1989).

120. HANDBOOK, *supra* note 3, art. 36, at 38, 86; J. HONNOLD, *supra* note 12, at 267-69.

121. HANDBOOK, *supra* note 3, art. 37, at 39, 86-87; J. HONNOLD, *supra* note 12, at 270-73; see also IOWA CODE §§ 554.2601, .2608 (1989).

122. HANDBOOK, *supra* note 3, art. 37, at 39, 86-87; J. HONNOLD, *supra* note 12, at 270-73; see also IOWA CODE § 554.2508(1) (1989).

123. HANDBOOK, *supra* note 3, art. 39, 87; J. HONNOLD, *supra* note 12, at 274-77.

124. HANDBOOK, *supra* note 3, art. 39, at 39, 87; J. HONNOLD, *supra* note 12, at 278-84.

relates to facts the seller did not disclose to the buyer.¹²⁵

The seller must deliver goods free from any claim of a third party, unless the buyer agrees to take the goods subject to such a claim,¹²⁶ including a third-party claim of intellectual property rights.¹²⁷ The buyer may not rely on the seller's obligation unless the buyer gives notice to the seller of the third-party claim. The seller may not rely on the buyer's obligation to give such notice, however, if the seller knew of the third-party claim.¹²⁸

The buyer may reduce the price or claim damages for having a reasonable excuse for failure to give timely notice of lack of conformity or third-party claims.¹²⁹

3. *Section III: Remedies for Breach of Contract by the Seller*

If the seller fails to perform any obligations under the contract or the CISG, the buyer may exercise certain rights and claim damages.¹³⁰ The buyer may compel performance,¹³¹ fix an additional final period for performance¹³² (although the seller may cure default after the date of delivery),¹³³ avoid the contract,¹³⁴ reduce the price of nonconforming goods,¹³⁵ and exercise any of these rights with respect to goods that were not delivered or that do not conform when the remainder of the goods have been delivered and do conform.¹³⁶ If the seller delivers the goods before the delivery date, the buyer may either accept or reject the goods. If the buyer accepts a greater quantity of goods, the buyer must pay for the excess quantity at the contract rate.¹³⁷

C. *Chapter III: Obligations of the Buyer*

The buyer must pay the price for the goods and take delivery as the contract and the CISG require.¹³⁸

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125. HANDBOOK, *supra* note 3, art. 40, at 39, 87; J. HONNOLD, *supra* note 12, at 278-84.
 126. HANDBOOK, *supra* note 3, art. 41, at 40, 87-88; J. HONNOLD, *supra* note 12, at 285-88.
 127. HANDBOOK, *supra* note 3, art. 42, at 40, 87-88; J. HONNOLD, *supra* note 12, at 289-92.
 128. HANDBOOK, *supra* note 3, art. 43, at 40, 87-88; J. HONNOLD, *supra* note 12, at 293.
 129. HANDBOOK, *supra* note 3, art. 44, at 41, 87; J. HONNOLD, *supra* note 12, at 278-84.
 130. HANDBOOK, *supra* note 3, art. 45, at 41, 88-89; J. HONNOLD, *supra* note 12, at 296-98.
 131. HANDBOOK, *supra* note 3, art. 46, at 41, 88-89; J. HONNOLD, *supra* note 12, at 299-303.
 132. HANDBOOK, *supra* note 3, art. 47, at 42, 88-89; J. HONNOLD, *supra* note 12, at 304-08.
 133. HANDBOOK, *supra* note 3, art. 48, at 42; J. HONNOLD, *supra* note 12, at 309-14.
 134. HANDBOOK, *supra* note 3, art. 49, at 42-43, 88-89; J. HONNOLD, *supra* note 12, at 315-21.
 135. HANDBOOK, *supra* note 3, art. 50, at 43, 88-89; J. HONNOLD, *supra* note 12, at 322-27.
 136. HANDBOOK, *supra* note 3, art. 51, at 43, 88-89; J. HONNOLD, *supra* note 12, at 328-30.
 137. HANDBOOK, *supra* note 3, art. 52, at 44, 88-89; J. HONNOLD, *supra* note 12, at 331-32.
 138. HANDBOOK, *supra* note 3, art. 53, at 45, 89; J. HONNOLD, *supra* note 12, at 334.

1. *Section I: Payment of the Price*

The buyer must comply with all formalities required under the contract or by law to enable payment to be made.¹³⁹ If no price is indicated, the price charged at the time of the contract for like goods applies.¹⁴⁰ If the weight of the goods determines the price, net weight controls in case of doubt.¹⁴¹ If the buyer is not bound to make payment at one particular place, the buyer must pay the seller at the seller's place of business or at the place where the goods or documents are handled.¹⁴² The buyer is not bound to pay until the buyer has had an opportunity to inspect the goods. The buyer must pay, however, when the seller places the goods or documents controlling them at the buyer's disposal.¹⁴³ Last, the buyer must pay timely without request by the seller.¹⁴⁴

2. *Section II: Taking Delivery*

The buyer's obligation to take delivery consists of doing all acts reasonable for the seller to make delivery, and taking over the goods.¹⁴⁵

3. *Section III: Remedies for Breach of Contract by the Buyer*

If the buyer fails to perform any obligation under the contract or the CISG, the seller may exercise certain rights and claim damages.¹⁴⁶ The seller may compel performance,¹⁴⁷ fix an additional time period for performance,¹⁴⁸ avoid the contract,¹⁴⁹ and supply missing specifications upon notice to the buyer.¹⁵⁰

D. *Chapter IV: Passing of Risk*

Loss of goods or damage to goods after risk has passed to the buyer does not discharge the obligation for payment.¹⁵¹ Risk of loss or damage to goods in transit, when a sales contract already exists, passes to the buyer when the seller hands over the goods.¹⁵² The same is true under U.C.C. § 2-

139. HANDBOOK, *supra* note 3, art. 54, at 44, 89; J. HONNOLD, *supra* note 12, at 335-36.

140. HANDBOOK, *supra* note 3, art. 55, at 44, 89; J. HONNOLD, *supra* note 12, at 337-39.

141. HANDBOOK, *supra* note 3, art. 56, at 45, 89; J. HONNOLD, *supra* note 12, at 340.

142. HANDBOOK, *supra* note 3, art. 56, at 45, 89; J. HONNOLD, *supra* note 12, at 341-43.

143. HANDBOOK, *supra* note 3, art. 58, at 45, 89; J. HONNOLD, *supra* note 12, at 344-49.

144. HANDBOOK, *supra* note 3, art. 59, at 45, 89; J. HONNOLD, *supra* note 12, at 350-51.

145. HANDBOOK, *supra* note 3, art. 60, at 46, 89; J. HONNOLD, *supra* note 12, at 352-53.

146. HANDBOOK, *supra* note 3, art. 61, at 46, 89; J. HONNOLD, *supra* note 12, at 354.

147. HANDBOOK, *supra* note 3, art. 62, at 46, 89; J. HONNOLD, *supra* note 12, at 355-59.

148. HANDBOOK, *supra* note 3, art. 63, at 46, 89; J. HONNOLD, *supra* note 12, at 360-61.

149. HANDBOOK, *supra* note 3, art. 64, at 47, 89; J. HONNOLD, *supra* note 12, at 362-64.

150. HANDBOOK, *supra* note 3, art. 65, at 47, 89; J. HONNOLD, *supra* note 12, at 365-66.

151. HANDBOOK, *supra* note 3, art. 66, at 48, 89-90; J. HONNOLD, *supra* note 12, at 369-70.

152. HANDBOOK, *supra* note 3, art. 67, at 48, 90; J. HONNOLD, *supra* note 12, at 371-78.

509.¹⁵³ Risk of loss or damage to goods, already in transit where there is no sales contract, passes to the buyer when a sales contract is made.¹⁵⁴ In cases of rejection, revocation, and repudiation, risk is allocated as U.C.C. § 2-510 provides.¹⁵⁵

E. Chapter V: Provisions Common to the Obligations of the Seller and Buyer

1. Section I: Anticipatory Breach and Installment Contracts

A party may suspend performance of obligations if the other party will not perform obligations.¹⁵⁶ A party may avoid the contract before performance if it is clear the other party will commit a fundamental breach.¹⁵⁷ A party may avoid the contract as to one or more installments if the other party commits a fundamental breach as to one or more installments.¹⁵⁸

2. Section II: Damages

"Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach."¹⁵⁹ Damages may not exceed the loss that the breaching party could foresee.¹⁶⁰ This is the common law approach.¹⁶¹ If the contract is avoided, the party claiming damages may recover the difference between the contract price and the price paid for substituted goods or the price received in a substituted transaction.¹⁶² This CISG provision is similar to U.C.C. § 2-706, which allows the seller to resell and recover the difference plus incidental damages, less expenses saved, and U.C.C. § 2-712, which allows the buyer to "cover" by making a substitute purchase and to recover the difference plus incidental or consequential damages, less expenses saved.¹⁶³ If the contract is avoided and a current price is available for the goods, and the party claiming damages has not made a purchase or resale, the party may recover the difference between the price fixed by the contract and the current price at the time of avoidance and any further damages.¹⁶⁴

153. See *supra* note 152; see also IOWA CODE § 554.2509 (1989).

154. HANDBOOK, *supra* note 3, art. 68, at 48, 90; J. HONNOLD, *supra* note 12, at 379-80.

155. HANDBOOK, *supra* note 3, arts. 69, 70, at 48-49, 90; J. HONNOLD, *supra* note 12, at 381-90; see also IOWA CODE § 554.2510 (1989).

156. HANDBOOK, *supra* note 3, art. 71, at 49, 90; J. HONNOLD, *supra* note 12, at 392-400.

157. HANDBOOK, *supra* note 3, art. 72, at 50, 90; J. HONNOLD, *supra* note 12, at 401-03.

158. HANDBOOK, *supra* note 3, art. 73, at 50, 90; J. HONNOLD, *supra* note 12, at 404-03.

159. HANDBOOK, *supra* note 3, art. 74, at 50, 90; J. HONNOLD, *supra* note 12, at 408-11.

160. See *supra* note 159.

161. See *supra* note 159.

162. HANDBOOK, *supra* note 3, art. 75, at 51, 90; J. HONNOLD, *supra* note 12, at 412-16.

163. See *supra* note 162; see also IOWA CODE §§ 554.2706, .2712 (1989).

164. HANDBOOK, *supra* note 3, art. 76, at 51, 90; J. HONNOLD, *supra* note 12, at 412-16.

A party who relies on breach of contract must mitigate damages.¹⁶⁵

3. Section III: Interest

If a party fails to pay the purchase price or any other sum, the other party is entitled to collect interest on the price without prejudice to any other claim for damages.¹⁶⁶

4. Section IV: Exemptions

A party is not liable for failing to perform obligations due to *force majeure*.¹⁶⁷ Nevertheless, a party may not rely on the failure of the other party to perform obligations to the extent the first party causes the failure.¹⁶⁸

5. Section V: Effects of Avoidance

Avoidance of the contract releases both parties from their obligations, subject to any damages, and a party who has performed either wholly or in part may claim restitution from the other party for whatever the first party has supplied or paid under the contract.¹⁶⁹ The buyer loses the right to avoid the contract if the buyer cannot make restitution of the goods in substantially the same condition in which the goods were received.¹⁷⁰ A buyer who has lost the right to avoid the contract retains all other remedies.¹⁷¹ If the seller is bound to refund the purchase price, the price must be refunded with interest from the date paid. If the buyer must make restitution of all or any part of the goods, the buyer must account to the seller for all benefits derived from them.¹⁷²

6. Section VI: Preservation of the Goods

If the buyer delays in making payment or in taking receipt of the goods, the seller must take reasonable steps to preserve the goods and can retain the goods until reimbursed for this expense.¹⁷³ If the buyer has received the goods, or the buyer places the goods at the destination for receipt and intends to reject the goods, the buyer must take reasonable steps to preserve the goods and can retain them until reimbursed for this expense.¹⁷⁴ A party

165. HANDBOOK, *supra* note 3, art. 77, at 51, 90; J. HONNOLD, *supra* note 12, at 417-21.

166. HANDBOOK, *supra* note 3, art. 78, at 51, 90; J. HONNOLD, *supra* note 12, at 422-25.

167. HANDBOOK, *supra* note 3, art. 79, at 52, 90; J. HONNOLD, *supra* note 12, at 426-43.

168. HANDBOOK, *supra* note 3, art. 80, at 52, 90; J. HONNOLD, *supra* note 12, at 444.

169. HANDBOOK, *supra* note 3, art. 81, at 52-53, 90; J. HONNOLD, *supra* note 12, at 446-49.

170. HANDBOOK, *supra* note 3, art. 82, at 53, 90; J. HONNOLD, *supra* note 12, at 450-52.

171. HANDBOOK, *supra* note 3, art. 83, at 53, 90; J. HONNOLD, *supra* note 12, at 453.

172. HANDBOOK, *supra* note 3, art. 84, at 53, 90; J. HONNOLD, *supra* note 12, at 454-55.

173. HANDBOOK, *supra* note 3, art. 85, at 54, 90; J. HONNOLD, *supra* note 12, at 457-58.

174. HANDBOOK, *supra* note 3, art. 86, at 54, 90; J. HONNOLD, *supra* note 12, at 459-60.

who must preserve the goods may deposit them in a third person's warehouse at the expense of the other party, provided the expense is not unreasonable.¹⁷⁵ A party who is bound to preserve the goods may sell them if an unreasonable delay by the other party has occurred in taking possession or if the goods are subject to rapid deterioration.¹⁷⁶

V. CONCLUSION

In order to expand Iowa's economy and create more jobs and affluence for its people, international trade opportunities of all kinds¹⁷⁷ must be explored. Export opportunities abound in Iowa for the small, rural cottage industry, the large, urban manufacturing industry, and for businesses between either extreme. Members of the Iowa Bar, as leaders of their respective communities, have the influence to encourage local business growth and economic expansion by means of international trade.¹⁷⁸ The CISG is the chief means by which the international sale of goods may be contracted expeditiously.¹⁷⁹ The more significant differences between the CISG and Article 2 of the U.C.C. include: (a) formation of the contract;¹⁸⁰ (b) time of receipt;¹⁸¹ (c) revocation;¹⁸² (d) acceptances with modification;¹⁸³ (e) the statute of frauds;¹⁸⁴ (f) conformity of goods;¹⁸⁵ (g) discovery of nonconformity;¹⁸⁶ (h)

175. HANDBOOK, *supra* note 3, art. 87, at 54, 90; J. HONNOLD, *supra* note 12, at 461.

176. HANDBOOK, *supra* note 3, art. 88, at 54-55, 90; J. HONNOLD, *supra* note 12, at 462-63.

177. Manufacturing as well as agricultural opportunities must be explored, and manufacturing in particular must be expanded.

178. Business clients may not think to expand their markets into the international arena unless prompted by knowledgeable legal counsel. To encourage exporting, the Iowa practitioner may refer clients to The Primary Research and Marketing Center for Business and International Trade which is the information resource and coordination center for the Iowa Economic Development Network of the Iowa Department of Economic Development. Memorandum from Don Murray, Iowa Economic Dev. Coordinator, Iowa Dep't of Economic Dev. 1 (February 22, 1989). One of the functions of the information resource and coordination center is to: "[a]ssist Iowa businesses to enter the international marketplace, through the development of export marketing strategies and the procurement of export financing, including the use of bartering transactions." *Id.* at 2; see also IOWA CODE § 28.101 (1989) (Duties and responsibilities of Primary Research and Marketing Center for Business and International Trade). The Iowa Economic Development Network is the first computerized, state-wide, buyer-seller network in the United States. Export trade leads for Iowa businesses are entered on a daily basis and can be accessed, where interested businesses are located, in Des Moines or at 16 satellite centers throughout Iowa. There is no charge for the service. IOWA DEP'T OF ECONOMIC DEV., HOW TO USE THE IOWA ECONOMIC DEVELOPMENT NETWORK (1988).

179. This assumes that the parties do not "contract out" of the CISG. Obviously, negotiations will be more time consuming if the law of the contract must be determined.

180. Kantor, *supra* note 10, at 12.

181. *Id.*

182. *Id.*

183. *Id.* at 12-13.

184. *Id.* at 13.

185. *Id.*

remedies;¹⁸⁷ (i) specific performance;¹⁸⁸ and (j) price reduction.¹⁸⁹ The Iowa practitioner should have a basic appreciation of these differences and of the CISG as a whole, because the CISG is perhaps the one body of international law that may have the most direct and significant domestic impact on Iowa businesses and Iowa's economy.¹⁹⁰ The CISG represents an international

186. *Id.*

187. *Id.* at 13-14.

188. *Id.* at 14.

189. *Id.*

190. Perhaps the most practical guide to the CISG for the Iowa practitioner is the book entitled, "*Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods*" (A.H. Kritzer ed. 1989) (Kluwer Law & Tax. Pub., 6 Bigelow St., Cambridge, Mass. 02139). The Guide is edited by Albert H. Kritzer, former International Sales Counsel for the General Electric Company, and is sponsored by the Federal Bar Association and the Westchester-Fairfield Corporate Counsel Association.

Part I of the Guide consists of an Executive Summary, which includes an overview of the CISG, and a checklist of contract modifications that exporters may wish to consider when the CISG governs an international sales contract. The Guide suggests that an exporter:

- [1.] recognize the absence of a Statute of Frauds [and] consider a contract "Statute of Frauds" which also seeks to respond to the fact that the Convention has no parol evidence rule;
- [2.] take into account other differences between the Convention's rules on the formation of contracts and the rules to which [American] attorneys are accustomed [such as the CISG's] rules on revocability of offers and on the resolution of battle-of-the-forms issues;
- [3.] identify the applicable gap-filling law;
- [4.] [refer] to ICC *Incoterms* and *Publication 400* for comprehensive attention to delivery terms, risks of loss, documentary credits, and related issues;
- [5.] add a "perfect tender" Doctrine to your Terms of Payment clause in order to make it clear that failure to comply with payment or letter of credit obligations will constitute a "fundamental breach of contract . . .";
- [6.] include a suitable limitation of liability and exclusion of consequential damages and [determine whether] to restrict the right to reduction of the price and the right to specific performance that may be available under the Convention;
- [7.] do not rely on the CISG's counterpart to force majeure . . . substitute [on a contract-by-contract basis an] excusable delays clause;
- [8.] specify . . . the period for notification of defects that is most suitable to [the particular] product . . .;
- [9.] consider a "Statute of Limitations" to forestall stale lawsuits;
- [10.] . . . consider carefully the situs of the arbitration;
- [11.] consider the desirability of tying down the applicable interest rate and procedures to trigger its running;
- [12.] . . . include a clause on mitigation of loss that clearly applies to all remedies, not merely claims for damages; [and]
- [13.] . . . identify the place of business of each party that has the "closest relationship to the contract and its performance."

Id.

The Guide also contains a detailed analysis of the CISG and a U.C.C./CISG concordance, indexing U.S. Uniform Commercial Code comparatives.

Last, the book includes an annotated export contract and typical export contract clauses, accompanied by data on how best to adapt international sales contracts to maximize opportuni-

consensus that fairly may be presumed to represent a common nucleus of rules and principles acceptable for businesses in most countries¹⁹¹ and the means by which Iowa products most likely will be exported¹⁹² in the future to expand the state's economy.

ties afforded by the CISG.

191. Thieffry, *Sale of Goods Between French and U.S. Merchants: Choice of Law Considerations Under the U.N. Convention on Contracts for the International Sale of Goods*, 22 INT'L LAW. 1017, 1035 (1988).

192. Patrick Thieffry, Avocat au Barreau de Paris and Attorney at Law in New York and Georgia, suggests that from the French perspective, the CISG is to be preferred to either U.S. domestic sales law or French domestic sales law when negotiating an international sale of goods contract between parties whose places of business are in the United States and France. See *supra* note 192. This view may well be representative of practitioners in other foreign countries when negotiating an international sale of goods contract with the Iowa practitioner.