



International Distribution Institute

GENERAL INTRODUCTION

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Identifying the law governing sales
in the context of distribution
agreements

Discussing critical issues arising
between buyers and sellers under
the CISG

The traditional approach

- **Sellers tend to refer to general conditions of sale based on their own domestic law**
 - This may create problems with the counterpart which would prefer a more neutral solution.
 - Problems if a neutral Court or arbitration panel needs to decide disputes.
 - The CISG may be a neutral solution, but it is rejected by most companies.
- **Most sellers do not know what the application CISG implies in practical terms**
 - This is why we will concentrate on a number of crucial issues which normally arise between seller and buyer and check the differences with domestic laws.

The purpose of the conference

- **We do not intend to make a battle in favour of the Uniform Sales Law (CISG).**
- **Other neutral solutions available (Swiss, Swedish, English law) may be considered.**
- **However, those who draft sales contracts, must be aware of the pros and cons of the CISG before deciding to exclude its application.**
- **This is why we are going to discuss how certain issues which frequently arise between buyers and sellers are judged by the national courts under the CISG.**

The practical issues to be discussed

Panel 1. Sales contract concluded through incorporation of standard terms.

- Conflicting general conditions of seller and buyer. Discussion of a court case dealing with this issue.

Panel 2. Defending against claims for defects without needing to discuss about their actual existence

- Under the CISG one can invoke that the complaint is ineffective because it does not specify the nature of the defect and/or that the complaint is late.

Panel 3. Limiting the amount of seller's liability for damages

- The limit of foreseeability does not sufficiently protect the seller.
- Need to contractually limit damages: ceiling of damages; exclusion of consequential damages

Panel 4. Preventing termination in case of fundamental breach invoked by buyer

- The limit of unforeseeability
- No fundamental breach (and no termination) if the defect can be easily remedied or if the buyer refuses seller's request to remedy

Panel 6. Excluding CISG by express or implied choice of the parties

- Express choice of domestic law : agreements between parties of signatory parties
- Implied exclusion of CISG through reference to domestic law

Panel 7. Conclusive remarks

- Should we exclude the CISG (but in favour of what?) or accept it and draft our general conditions in accordance with its provisions?