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ANOTHER CISG CASE IN THE U.S. COURTS: PITFALLS FOR THE PRACTITIONER AND THE POTENTIAL FOR REGIONALIZED INTERPRETATIONS

*Harry M. Flechtner**

A recent Oregon decision that cites the United Nations Convention on Contracts for the International Sale of Goods ("CISG" or "the Convention")[1] does so in as passing a fashion as possible: the Convention is mentioned only in the last footnote to the dissenting opinion. For those interested in the jurisprudence emerging from the growing body of case law on CISG, nevertheless, the case has considerable significance—significance ranging from the intensely practical and obvious to the more subtle, theoretical and speculative. The decision triggers interesting conjecture on the global dynamics of CISG interpretation, and it offers a vivid illustration of how critical it is for commercial lawyers to be familiar with the Convention.

A. GPL Treatment: Facts and Reasoning

The case, *GPL Treatment, Ltd. v. Louisiana-Pacific Corp.*,[2] involved alleged sales of cedar shakes by a Canadian family wood products business to a U.S. corporate buyer. The seller (GPL) introduced testimony that a trader in the Portland, Oregon area offices of Louisiana-Pacific Corporation (L-P) agreed by telephone in May 1992—during a period of rising prices—to purchase a large quantity of shakes from GPL. GPL asserted that later, when market prices began to fall, the parties orally renegotiated certain terms. GPL allegedly confirmed both the original sale and the renegotiated agreement by mailing to L-

* Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law. I wish to thank my colleague, Professor Ronald Brand of the University of Pittsburgh School of Law, not only for his insightful suggestions on this particular essay, but more generally for making it possible *and* enjoyable for me to work in the area of international sales law. I also thank Pittsburgh Law student Jennifer Hanley for her intelligent and energetic assistance.

1. U.N. Conference on Contracts for the International Sale of Goods, Final Act (Apr. 10, 1980), U.N. DOC. A/CONF. 97/18, *reprinted in* S. Treaty Doc. No. 98-9, 98th Cong., 1st Sess. and 19 I.L.M. 668 (1980) [hereinafter CISG or Convention].

2. 894 P.2d 470 (Or. Ct. App. 1995), *rev. granted*, 898 P.2d 770 (Or. 1995).

P "confirmation" forms that instructed the buyer to sign and return one copy of the form, but L-P did not return or otherwise respond to the confirmations. L-P, on the other hand, claimed that it had not committed itself to buying any shakes, and it denied receiving any confirmation forms. After accepting several shipments of shakes in July, L-P refused further deliveries and GPL sued in Oregon state court.[3]

At trial L-P argued, inter alia, that GPL's claim was barred by Section 2-201(1) of the Uniform Commercial Code as enacted in Oregon. This Statute of Frauds provision prevents enforcement of a contract for the sale of goods at a price of $500 or more unless the agreement is evidenced by a writing signed by the "party against whom enforcement is sought."[4] Because the buyer had never signed any such writing, L-P argued, GPL's suit should be dismissed. GPL replied that the contract was enforceable under Section 2-201(2), an exception to the signed writing requirement. The exception applies if, in a merchant to merchant transaction, the party against whom enforcement is sought has failed to respond within ten days to a written confirmation of the contract received from the other side.[5] Issue was joined over whether

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3. 894 P.2d at 471-72.

4. Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

U.C.C. § 2-201(1).

5. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

U.C.C. § 2-201(2).

Note that, to trigger the § 2-201(2) exception, a party must have received a confirmation that is "sufficient against the sender." That means the confirmation must satisfy the requirements of § 2-201(1) as to the sender (be signed by the sender, indicate a contract was made, etc.) so as to render the contract enforceable against the sender. One court explained the rationale for the exception as follows:

> The purpose of [U.C.C. § 2-201(2)] is to rectify an abuse that had developed in the law of commerce. The custom arose among business people of confirming oral contracts by sending a letter of confirmation. This letter was binding as a memorandum on the sender, but not on the recipient, because he had not signed it. The abuse was that the recipient, not being bound, could perform or not, according to his whim and the market, whereas the seller had to perform. Obviously, under these circumstances, sending any confirming memorandum was a dangerous practice. Subsection (2) of Section 2-201 of the Code cures the abuse by holding a recipient bound unless he communicates his objection within 10 days.

Azevedo v. Minister, 471 P.2d 661, 665 (Nev. 1970) (footnotes omitted).

the statement on GPL's confirmation forms instructing the buyer to sign and return copies of the forms prevented those documents from satisfying the Section 2-201(2) requirement of a "writing in confirmation of the contract."

The trial judge found that GPL's confirmation forms were sufficient to trigger the Section 2-201(2) exception, and the jury returned a verdict in favor of GPL for over $740,000.[6] A divided Oregon Court of Appeals affirmed. The majority reasoned that, although the "sign and return" instructions on GPL's forms suggested that they were mere offers to sell rather than confirmations of existing contracts, other considerations—including the fact that the forms were labelled "confirmations"—established that the documents were intended to confirm the existence of prior agreements.[7] The majority thus held that the elements of the Section 2-201(2) exception to the Statute of Frauds had been met, and GPL could enforce its contract claims. The dissenting judge cited decisions from other jurisdictions holding that "sign and return" documents did not constitute "confirmations" and thus did not satisfy the requirements of Section 2-201(2).[8] The dissent argued that the majority decision "creates an 'Oregon exception' to the uniformity that is one of the underlying purposes of the U.C.C."[9] The Oregon Supreme Court has agreed to review the decision.[10]

During the trial, GPL's counsel had attempted to argue that the alleged sales between GPL and L-P were governed by CISG rather than by Oregon's U.C.C., but the trial judge ruled that the point had been raised too late.[11] The dissent in the Court of Appeals mentioned this matter in a concluding footnote:

> I would, however, address plaintiffs' cross-assignment that the trial court erred in refusing to apply the United Nations Convention on Contracts for the International Sale of Goods (CISG), 15 U.S.C.A. App. (Supp. 1994), instead of the U.C.C. Article 11 of the CISG does not require a contract to be "evidenced by writing" and thus, would defeat L-P's statute of frauds defense if the trial court abused its discretion under ORCP 23 B [governing the amendment of pleadings to conform to

6. 894 P.2d at 472, 474.

7. *Id.* at 474-75.

8. *Id.* at 476.

9. *Id.* at 475.

10. GPL Treatment, Ltd. v. Louisiana-Pacific Corp., 898 P.2d 770 (Or. 1995).

11. *GPL Treatment*, 894 P.2d at 477 n.4 (Leeson, J., dissenting); Respondent's Brief to the Oregon Court of Appeals at 28-29, *GPL* (No. 9209-06143).

the evidence] in ruling that plaintiffs' attempt to raise the CISG was untimely and that they had waived reliance on that theory.[12]

B. CISG: An Outcome-Determinative Departure

The dissent's footnote is certainly correct about the substantive result if CISG had been applied in *GPL*. Article 11 of the Convention provides that "[a] contract of sale need not be concluded in or evidenced by writing." There is only one exception to this rule. Article 12 of the Convention states that the CISG provisions dispensing with the need for a writing do not apply if a party to the transaction is located in a country that ratified the Convention with the reservation permitted by Article 96.[13] A declaration pursuant to Article 96 is the most common reservation among "Contracting States" (i.e., countries that have ratified CISG),[14] but neither of the countries where the parties in *GPL* were located—the United States and Canada—has made such a reservation.[15] Thus, if the court had applied CISG to the transactions between GPL and L-P, the lack of a writing signed by the buyer would have been no obstacle to the seller's claim.

Putting aside the possibility that (as the trial court held) the seller had waived this argument, the alleged sales in *GPL* appear to be governed by the Convention rather than Article 2 of the U.C.C. Article 1(1)(a) of CISG provides that the Convention applies to international

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12. 894 P.2d at 477 n.4 (Leeson, J., dissenting).

13. CISG Article 12 states:

> Any provision of article 11, article 29 [on modifying or terminating a sales contract] or Part II of the Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

14. At the time of this writing, nine Contracting States—Argentina, Belarus, Chile, China, Estonia, Hungary, Lithuania, the Russian Federation, and the Ukraine—have made declarations under Article 96. *See Journal of Law and Commerce CISG Contracting States and Declarations Table*, 14 J.L. & COM. 235 (1995) [hereinafter *Declarations Table*].

15. Had the United States or Canada ratified CISG with an Article 96 reservation, the provisions of Article 11 permitting a contract to be made in non-written form would not apply to the transaction in *GPL*. CISG Art. 12. In that case, the domestic sales law applicable under choice of law principles would determine whether a writing was required. JOHN O. HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION § 129 at 188 (2d ed. 1991). Thus if the court's choice of law analysis pointed to the law of the jurisdiction where the buyer (L-P) was located, then the writing requirements of U.C.C. § 2-201 as enacted in Oregon would apply. This would be the result no matter which country—the U.S. or Canada—had made the Article 96 reservation.

sales of goods between parties located in different Contracting States. The alleged transactions in *GPL* were, apparently, cross-border sales between a Canadian seller and a U.S. buyer.[16] The U.S. and Canada have both ratified CISG, and the transactions at issue occurred after the date that the Convention became effective in both countries.[17] Thus, based on the facts stated by the Oregon Court of Appeals, CISG appears to apply under Article 1(1)(a).

The foregoing highlights an important and highly practical lesson of the *GPL* case. The seller came perilously close to losing its suit—indeed, it may still lose before the Oregon Supreme Court—because it delayed raising the argument that CISG governed its transactions with L-P. At trial and on appeal, the U.C.C. Statute of Frauds was a major stumbling block for GPL. Only a controversial opinion by a divided Court of Appeals, still subject to review by the Oregon Supreme Court, gave GPL the win on a point that is a non-issue had CISG been applied. The case thus stands as a stark warning that *all* practitioners whose practice encompasses commercial matters should be familiar with the Convention. The Statute of Frauds is only

16. It is not entirely clear that the parties were located in different Contracting States. The *GPL* opinion indicates that the seller, while operating primarily in Canada, had at least one office in the United States. *See* 894 P.2d at 471. According to CISG Article 10(a), if a party has several places of business, the one that determines where the party is deemed located is "that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract." Under Article 1(2), furthermore, a sale is not deemed international unless the fact that the parties were located in different countries was apparent "either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract." Thus to determine whether CISG applied to the transactions in *GPL* one might need further facts about how the alleged contract was negotiated and what the parties knew (or should have known) at the time the contract was formed concerning the location and planned performance of the other party. GPL's brief to the Oregon Court of Appeals asserted that the seller's communications relating to the transactions (including the mailing of the confirmation forms) took place in its Canadian offices, and that the shakes allegedly sold to L-P were to be produced in its Canadian facilities. Respondent's Brief at 31-32, *GPL* (No. 9209-06143). L-P's Reply Brief argued that "in the absence of discovery, briefing, and an evidentiary record, it is idle to speculate on what particular factual issues might be involved in the question of the applicability of the CISG in this instance." Appellant's Reply Brief at 15, *GPL* (No. 9209-06143).

17. According to Article 100(2), the Convention applies under Article 1(1)(a) only to sales contracts formed after the dates on which CISG became effective in the countries of both parties. Under Article 99, the Convention takes effect in a country one year after the first of the month following ratification. CISG went into force in the United States on January 1, 1988. *Declarations Table*, *supra* note 14, at 242. The Convention's effective date in Canada was May 1, 1992. *Id.* at 237. Because the alleged sales in *GPL* occurred in 1992, the timing requirements of Article 100(2) were satisfied. It should be noted that, for contract formation issues, the Convention applies under Article 1(1)(a) only if the offer was made on or after the effective dates of CISG in the countries of both parties. CISG Article 100(1).

one area in which CISG makes significant, potentially outcome-determinative changes in U.S. sales law. Other such areas include, but certainly are not limited to, contract formation,[18] parol evidence,[19] the effect of missing contractual terms,[20] and remedies.[21] Attorneys who fail to familiarize themselves with CISG and the crucial changes it makes risk both their clients' rights and their own professional reputation.[22]

C. CISG as Regional Trade Law: The Impetus for Regionalized Interpretations

There is another significant aspect to the *GPL* case: it is the first reported CISG decision involving a transaction between Canadian and U.S. parties.[23] This highlights an important fact: all current U.S. trade

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18. *See* John E. Murray, Jr., *An Essay on the Formation of Contracts and Related Matters Under the United Nations Convention on Contracts for the International Sale of Goods*, 8 J.L. & COM. 11 (1988).

19. *See* Ronald A. Brand & Harry M. Flechtner, *Arbitration and Contract Formation in International Trade: First Interpretations of the U.N. Sales Convention*, 12 J.L. & COM. 239, 251-52 (1993); Harry M. Flechtner, *More U.S. Decisions on the U.N. Sales Convention: Scope, Parol Evidence, "Validity," and Reduction of Price Under Article 50*, 14 J.L. & COM. 153, 156-61 (1995).

20. Paul Amato, *U.N. Convention on Contracts for the International Sale of Goods—The Open Price Term and Uniform Application: An Early Interpretation by the Hungarian Courts*, 13 J.L. & COM. 1 (1993).

21. *See* James J. Callaghan, *U.N. Convention on Contracts for the Sale of Goods: Examining the Gap-Filling Role of CISG in Two French Decisions*, 14 J.L. & COM. 183, 198-99 (1995); Eva Diederichsen, *Commentary to Journal of Law and Commerce Case I; Oberlandesgericht, Frankfurt am Main*, 14 J.L. & COM. 177 (1995); Flechtner, *supra* note 19, at 169-76; Harry M. Flechtner, *Remedies Under the New International Sales Convention: The Perspective from Article 2 of the U.C.C.*, 8 J.L. & COM. 53 (1988).

22. A variety of guides to and sources of information about CISG are available. In addition to the material published by the *Journal of Law and Commerce* in its ongoing project to promote understanding of CISG, see HONNOLD, *supra* note 15; ALBERT H. KRITZER, GUIDE TO PRACTICAL APPLICATIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1989); BUSINESS LAWS, INC., GUIDE TO THE INTERNATIONAL SALE OF GOODS CONVENTION (1994). Cites to CISG commentary and case law from around the world are collected in MICHAEL R. WILL, CISG, THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS: INTERNATIONAL BIBLIOGRAPHY, 1980-1995; THE FIRST 150 OR SO DECISIONS, 1988-1995 (1995). Case citations are also available through UNCITRAL, CLOUT: CASE LAW ON UNCITRAL TEXTS, U.N. DOC. A/CN.9/SER.C/ABSTRACTS/1 *et seq.* (1993 and later) and UNILEX, *A Comprehensive and Intelligent Data Base* [on floppy disk] *on the UN Convention on Contracts for the International Sale of Goods*, a project supervised by Professor M.J. Bonell for Transnational Publications of Irvington, New York. A World Wide Web database devoted to CISG ("http://cisgw3.law.pace.edu" or "http://www.cisg.law.pace.edu") is being constructed by the Institute of International Commercial Law of Pace University School of Law and should soon be available.

23. The other U.S. cases that cite CISG include three involving transactions with parties from Italy (Graves Import Co., Ltd. v. Chilewich Int'l Corp., No. 92 CIV. 3655, 1994 U.S. Dist. LEXIS 13393 (S.D.N.Y. Sept. 21, 1994); Delchi Carrier S.p.A. v. Rotorex Corp., No. 88-CIV-1078, 1994 U.S. Dist. LEXIS 12820 (N.D.N.Y. Sept. 7, 1994); Filanto, S.p.A. v. Chilewich Int'l Corp., 789 F.

in goods with Canada, the United States' largest trading partner,[24] is governed by CISG, unless the parties opt out of the Convention pursuant to Article 6. Because Mexico, the United States' third largest trading partner,[25] has also ratified the Convention,[26] the overwhelming majority of international sales in North America are subject to CISG unless the parties agree otherwise. In other words, CISG is in effect the sales law of the North American Free Trade Area created by the NAFTA Treaty and its implementing legislation.[27]

This role of CISG—as the de facto sales law of a regional trading area—is not confined to North America. Because the Convention has been ratified by the major economies of Western Europe,[28] CISG operates as the presumptive sales law for most trade in goods within the European Union. Even the gaps in CISG ratification tend to reflect regional trading patterns: notably missing from the roster of ratifying nations at the present time is the country with the world's second largest economy—Japan[29]—along with many other significant economies in the Asian-Pacific area.[30]

The phenomenon of CISG acting as the sales law of different regional trading groups—the result of the interplay between patterns of trade and patterns of ratification of the Convention—is not surprising.

Supp. 1229 (S.D.N.Y. 1994)), two cases involving transactions with Hungarian parties (S.V. Braun, Inc. v. Alitalia-Linee Aeree Italiane, S.p.A., No. 91 CIV. 8484 (LBS), 1994 WL 121680 (S.D.N.Y. Apr. 6, 1994); Interag Co., Ltd. v. Stafford Phase Corp., No. 91 CIV. 3253, 1990 WL 71478 (S.D.N.Y. May 22, 1990)), one case featuring a sale to a party in China (Beijing Metals & Minerals Import/Export Corp. v. American Bus. Ctr., Inc., 993 F.2d 1178 (5th Cir. 1993)), and one case involving a Swiss party (Orbisphere Corp. v. United States, 13 Ct. Int'l Trade 866 (1989)). There are, as yet, no reported decisions on CISG by Canadian courts. *See* WILL, *supra* note 22, at 243.

24. UNITED STATES BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S.: 1994 § 28 FOREIGN COMMERCE AND AID at 800 (Figure 28.2) (114th ed. 1994).

25. *Id.*

26. *Declarations Table*, *supra* note 14, at 241. The Convention went into force with respect to Mexico on January 1, 1989. *Id.*

27. 19 U.S.C.A. §§ 3311-3317 (Supp. 1995).

28. European countries that have ratified the Convention include, inter alia, Germany, France, Italy, Austria, the Netherlands, Spain, Switzerland, and the Scandinavian countries. *Declarations Table*, *supra* note 14, at 235. Non-ratifying European countries include Belgium, Great Britain, Greece, Ireland and Portugal. *Id.*

29. Etsuo Abe & Robert Fitzgerald, *Japanese Economic Success: Timing, Culture, and Organizational Capability*, BUS. HIST., Apr. 1995, at 1.

30. Other Asian-Pacific countries that have not ratified CISG include South Korea, Thailand, Taiwan, Hong Kong, Indonesia and Malaysia. *Declarations Table*, *supra* note 14, at 235. The People's Republic of China and Singapore have ratified CISG. *Id.* China did so on the same day that both the United States and Italy ratified. *Id.* Perhaps because of differences between China's economic system and the systems of countries like Japan and South Korea, China's ratification did not precipitate ratification by other major players in the Asian-Pacific area.

Because of economic and cultural similarities within the groups, reasons that attract one member to the Convention are likely to appeal to other members. Ratification by one member of the group may also create a kind of momentum pushing others to keep in step.[31]

The role of CISG as the de facto sales law of several key regional trading groups raises some significant issues. Inter-bloc transactions dominate the foreign trade of members of some of these groups. For example, although the trading activities of the United States span the globe, the bulk of U.S. international trade occurs within the North American Free Trade Area.[32] Similarly, one suspects that most international sales involving Germany, France and other Western European countries that have ratified CISG occur within the European Union. The size of the economies comprising the North American trading group and the European Union mean that transactions within these groups are likely to account for a large percentage of the sales subject to CISG. Such contracts are thus also likely to form the basis for a large proportion of the decisions construing CISG.

This phenomena is already apparent in Europe. German courts have produced far more identified decisions applying CISG than the tribunals of any other country, and virtually all of the transactions underlying those decisions have involved sales between European parties.[33] As yet there are relatively few U.S. decisions construing CISG, and those that have appeared have heretofore not involved Mexican or Canadian parties.[34] The *GPL* case may, however, signal that sales involving parties within the North American Free Trade Area are coming to the fore in U.S. decisions construing CISG.

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31. *See* Errol P. Mendes, *The U.N. Sales Convention and U.S.-Canada Transactions: Enticing the World's Largest Trading Bloc to Do Business Under a Global Sales Law*, 8 J.L. & COM. 109, 109 (1988) (before Canada ratified CISG, author argued that, because U.S. had ratified the Convention, "Canada, as [the United States' largest trading partner, has very little option but to follow suit." [footnote omitted]).

32. *See* UNITED STATES BUREAU OF THE CENSUS, *supra* note 24, at 823, 825.

33. The most comprehensive listing of cases citing CISG is in WILL, *supra* note 22. Of the 162 CISG decisions identified in Professor Will's extremely valuable collection, 73 are from German courts. Of those 73, only four arise from transactions involving a non-European party. Of the 108 CISG cases currently cited in the UNILEX computer database, *supra* note 22, 46 are from German courts; only one of those 46 features a transaction involving a non-European party.

34. *Supra* note 23 and accompanying text. One decision by a Mexican court involved a transaction between parties in the United States and Mexico. José Luis Morales y/o Son Export, S.A. de C.V., de Hermosillo Sonora, México v. Nez Marketing de Los Angeles California, E.U.A., D.O. May 27, 1993, 17-19 (COMPROMEX, Comisión para la Protección del Comercio Exterior de México, 1993), abstracted in UNILEX, *supra* note 22.

Thus, decisions involving transactions between members of regional trading groups may well come to dominate CISG jurisprudence. One possible result is the development of regionalized interpretations of the Convention. For several reasons, courts and arbitrators in a country that is part of a trading group may pay special deference to CISG decisions from other members of the group as compared to opinions from outside the bloc. For one thing, decisions emanating from another member of a trading group will often involve nationals of the forum's country. The forum tribunal is thus more likely to learn of such cases, and reciprocity considerations may argue for taking special heed of decisions from major trading partners of the forum's state.

Furthermore, given that transactions with fellow members of a trading group often account for a disproportionate percentage of a country's international trade, it is particularly critical to develop a coherent and consistent legal structure for trade within the group. This puts a premium on avoiding inconsistencies and conflicts with the decisions of other trading group members. Given a choice between two incompatible applications of CISG, one followed in a fellow member of a trading bloc and the other originating from outside the group, the forum may well opt for the approach of its trading bloc colleague.

In addition, the high level of trading activity within a group will often produce understandings and procedures unique to parties located in the bloc. The Convention itself, in Article 8(3), provides that such usages and practices should be consulted in determining the obligations and rights of parties to a contract governed by CISG. Recognition of the understandings and practices among parties located within a trading group could thus become established in the CISG decisions of the group's members.

Whether a CISG decision originates in a fellow member of a trading group is, of course, just one of the factors likely to influence how much weight a tribunal attaches to the decision. Other factors will undoubtedly play important roles in the weighing of precedent. For example, a court may be more likely to learn of and follow decisions from other countries that share a legal tradition (e.g., common law or civil law) with the tribunal. Courts may also be more attracted to decisions from countries at a similar level of economic development with the forum state. Thus, it might be that a U.S. court would pay more deference to a decision from a developed nation in Western Europe than to one from Mexico, even though Mexico is part of the North American Free Trade Area and accounts for more U.S. trade than any European

country. Even if this proves true, it does not mean that Mexico's membership in the North American trading group will not exert a special pull on U.S. courts, or that such pull does not create a *tendency* (albeit one that can be overcome by other factors) towards a North American tradition of interpreting CISG. This commentary merely argues that, *other factors being equal*, courts will tend to pay more attention to decisions from fellow members of a trading group.

Is there anything wrong with the development of distinct regionalized interpretations of CISG? Obviously, the phenomenon threatens the uniformity in interpretation urged in Article 7 of the Convention. On the other hand, Article 7 itself recognizes that complete uniformity in interpreting the Convention is an aspiration toward which decision makers are to work rather than an absolute that can be achieved in every case. Article 7 seems to contemplate a *process*—leading eventually, it is hoped, toward a universally recognized interpretation, but a process that does not sacrifice other (and perhaps competing) considerations. Thus, Article 7 speaks of having "regard" to "the need to promote uniformity in" the application of CISG, but it also speaks of the need to promote "the observance of good faith."

The question is whether the development of distinct traditions of interpreting CISG in the different trading groups is part of a process that will lead, ultimately, to global uniformity in international sales law. How one answers that question may well echo one's vision of the role of trading groups in the development of free global trade. Do regional trading blocs constitute an obstacle to a free world-wide market, an additional institutional layer that fosters protectionism within the group and that must be overcome to achieve global free trade? Or do regional trading arrangements represent progress toward the development of free world commerce, interim steps that are part of a necessary evolution toward a common global marketplace?[35] From the former viewpoint, the appearance of distinct traditions of interpreting CISG in the different trading groups will represent one more backward step in the struggle for unified law. Under the latter view, however, the emergence of regionalized interpretations of CISG may well be a necessary

35. For articulation of the contradictory roles regionalism may play in the development of an open world market, see Robert D. Hormats, *Making Regionalism Safe*, FOREIGN AFFAIRS, Mar./Apr. 1994, at 97. *See also* Prime Minister Goh, Regionalism Stays Open, Address Before the Fortune Global Forum (Mar. 9, 1995), *in Regional Links Can Be Pillars of More Open Trade System*, STRAIGHTS TIMES (Singapore), Mar. 10, 1995, at 30; Gary G. Yerkey, *WTO Trade Ministers Agree to Study Regionalism, Multilateralism Links*, BNA INTERNATIONAL TRADE DAILY (Washington, D.C.), Oct. 25, 1995.

and desirable concomitant to the construction of a world trading regime through the development of supra-national regional trading arrangements.[36]

From the author's perspective—one not clouded by any deep knowledge of or sophistication concerning international trade and politics—there is no simple answer to the question whether different regionalized interpretations of CISG are a desirable (or at least unavoidable) step in the progress towards a uniform global sales law, or whether such interpretations are stumbling blocks on the path to uniformity, to be avoided or removed if possible. The devil is in the detail of how such interpretations would develop and be employed. It certainly is possible that they would reinforce protectionist tendencies in a trading bloc, facilitating transactions within the group while presenting a barrier to outsiders. On the other hand, they may represent a breakthrough in the recognition of views originating from outside a court's national legal system—a first critical step in transcending familiar but parochial approaches, and the initial stage in becoming accustomed to adopting an international perspective when dealing with international sales law. A regional interpretation of the Convention may even "fine tune" CISG to better reflect the expectations of parties to intra-bloc trade without substantially interfering with transactions that go outside the group. That would be a development fully in keeping with the premises of the Convention and the goal of a truly global sales law regime.

CONCLUSION

CISG first became applicable to transactions starting in 1988.[37] An increasing number of disputes governed by the Convention are now reaching the end of the pipeline and are generating court decisions. We are passing beyond the childhood of CISG jurisprudence and beginning to enter its adolescence—a period troubling and unsettling, but also ex-

36. Even if one accepts the argument that the development of regionalized interpretations of CISG shared by members of a trading bloc could be desirable, it is clear that different "national" interpretations of the Convention by individual countries cannot be justified. Professor Honnold has written eloquently of the importance of resisting the tendency to view the international text of CISG through the lens of one's own national jurisprudence. John Honnold, *The Sales Convention in Action—Uniform International Words: Uniform Application?*, 8 J.L. & COM. 207, 208-09 (1988). *See also* Alejandro M. Garro, *The Gap-Filling Role of the Unidroit Principles in International Sales Law: Some Comments on the Interplay Between the Principles and the CISG*, 69 TULANE L. REV. 1149, 1151-52 (1995). A major purpose of publishing translations of foreign decisions and commentary on CISG in the *Journal of Law and Commerce*, a project pursued since 1993, is to provide some tools for combatting this tendency.

37. *See Declarations Table*, *supra* note 14, at 235.

citing and crucial to the ultimate success of the venture. Expertise concerning the Sales Convention cannot now be confined to a small group of scholars and international law specialists. In this age of global commerce, seemingly routine transactions are subject to CISG. The general commercial practitioner must be aware of the Convention and the significant changes it brings to sales law.

This period is also a critical one in the development of appropriate methods of construing and applying CISG. It is likely that court decisions during this crucial early period will reflect the broader trends of international trade—in particular the proliferation and strengthening of regional trading groups. Whether that will be a stroke against the uniformity envisioned in Article 7 of the Convention, or whether it will help lay the foundation for ultimately achieving that uniformity, is not clear. The outcome will be determined by the efforts and intelligence of the lawyers, judges and commentators charged with understanding and applying CISG.