Treaties and Protocols Impacting the International Transportation of Goods

USA (National/Federal)

Related Content

A Practice Note giving a broad overview of certain key treaties and protocols that are important in the international transportation of goods, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Uniform Customs and Practice for Documentary Credits (UCP), Incoterms®, the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT), the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), and bilateral free trade agreements and multilateral free trade agreements such as the North American Free Trade Agreement (NAFTA).

Importers and exporters must be aware of the international treaties and protocols that impact their transportation of goods across international borders. This Note provides an overview of certain treaties and protocols that establish rules regarding a variety of transportation-related issues, including:

- Letter of credit practice, including rules regarding the transportation-related documents that must be presented to enable the seller to obtain payment.
- Allocation of risk between the parties in the international sale of goods through the use of standardized shipping terms.
- **Tariffs** and non-tariff barriers.
- Multilateral and bilateral free trade agreements.
- Expedited customs clearance.
- The responsibilities of air carriers in the international shipment of cargo.

For more information about transportation service providers and their roles in transportation logistics, see Practice Note, Logistics: Transportation Service Providers Overview. For more information on the supply chain generally, see Practice Note, Supply Chain Overview.

United Nations Convention on Contracts for the International Sale of Goods

The US and many of its major trading partners have adopted the **United Nations Convention on Contracts for the International Sale of Goods** (CISG). The CISG is a treaty that was developed by the **United Nations Commission on International Trade Law** (UNCITRAL) that:

- Applies to the international sale of goods between private businesses (excludes sale of goods to consumers, and sale of services, intangibles, investment securities, and certain other specified goods).
- Sets out rules for contract formation and the rights and obligations of buyers and sellers.
- Unless expressly excluded in the contract, automatically becomes the substantive law governing cross-border sales contracts between a party residing in the US and a counterparty residing in any other signatory country of the CISG.

- Has not been adopted by the United Kingdom, Taiwan, South Africa, and Hong Kong.

Similar to Article 2 of the **Uniform Commercial Code (UCC)**, which applies to sales contracts within the US, the CISG does not preempt private contracts between parties. Rather, the CISG:

- Codifies the default rules (gap fillers) governing the formation and performance of a sale of goods contract.
- Includes provisions requiring continued performance pending dispute resolution if a dispute arises under the parties' contract.

Like UCC Article 2, the CISG does not cover:

- **Issues ancillary to contract formation such as exclusivity and non-competition, which may be relevant to distribution and reseller agreements.** For more information about distribution agreements, see Standard Document, Distribution Agreement (Pro-Seller). For more information about reseller agreements, see Standard Document, Product Reseller Agreement (Pro-Supplier).
- **The sale of services.** For more information about the sale of services, see Standard Document, Professional Services Agreement.
- **The relationship between a seller of goods and its sales representatives.** For more information about sales representatives, see Standard Document, Sales Representative Agreement (Pro-Supplier).

Differences between the CISG and Article 2 of the UCC

There are many significant differences between the CISG and Article 2 of the UCC regarding:

- Covered transactions.
- Validity of the contract.
- Whether the contract must be in writing.
- The time for accepting an offer.
- Specification of price.
- The revocability of an offer.
- The "battle of the forms."
- The **statute of frauds**.
- The **parol evidence rule**.
- Rights to withhold delivery.
- Scope of damages.
- Rights following a breach.

For more information on the CISG, including the differences between the CISG and the UCC, see Practice Note, UN Convention on Contracts for the International Sale of Goods (CISG).

Uniform Customs and Practice for Documentary Credits

The Uniform Customs and Practice for Documentary Credits (UCP) is a set of standardized contractual rules governing the rights and obligations of sellers and buyers of goods and banks under **commercial letters of credit**, which are the primary means of making payment in the ordinary course of business for goods shipped in international trade.

Published by the **International Chamber of Commerce** (ICC), the current version is UCP 600 (the successor to UCP 500), which came into force on July 1, 2007. Although the UCP is a voluntary code that is not a treaty and does not have the force of law, its terms are almost universally incorporated by reference into commercial letters of credit. If the US parties select state law (including Article 5 of the state's adopted version of the UCC, which governs letters of credit) as the governing law of the letter of credit, they can supplement their choice of law by selecting a set of customary industry rules (such as the UCP) to address additional procedural and interpretive matters that may not specifically be covered by the UCC (see UCC Section 5-103, Scope cmt. 2).

A letter of credit typically requires an exporter to provide extensive documentation to the bank before the bank makes payment under the letter of credit. Articles 19 to 24 of the UCP set out the requirements for different types of transportation documents that may be required under a letter of credit.

For more information about commercial letters of credit, see Practice Notes, Commercial Letters of Credit and Letters of Credit: Types of Commercial Letters of Credit. For a sample form of commercial letter of credit, see Standard Document, Commercial Letter of Credit for International Sale Transactions.

Incoterms®

The Incoterms® rules (International Commercial Terms) are a series of defined commercial terms published by the International Chamber of Commerce that provide a common set of rules to clarify the responsibilities of sellers and buyers for the delivery of goods in domestic and international commercial transactions and reflect current transportation practices. While the Incoterms® rules are not embodied in a treaty and do not have the force of law, the rules are widely accepted by sellers and buyers who incorporate the terms in their international sale of goods contracts and increasingly use the terms in their domestic transactions.

Parties use Incoterms® rules to:

- Specify standardized shipping contract terms that:
  - eliminate the need to draft their own shipping terms for each transaction; and
  - clarify the responsibility of sellers and buyers for the delivery of goods and the risk of loss.
- Allocate transportation activities, costs, and risk between the parties, for example:
  - DDP (delivered duty paid), which is the Incoterms® rule that provides that the seller bears all risks and costs, including duties, taxes, import clearance, and all delivery charges until the goods are delivered to the specified destination; or
  - CPT (carriage paid to), which is the Incoterms® rule that provides that the seller bears the risk of loss and insurance costs until the seller delivers the goods to the transportation carrier, and bears the freight charges (but not the risk of loss) to transport the goods to the named destination.

Note that the scope of the Incoterms® is limited – they do not address other critical commercial terms between the parties (for example, technical specifications, delivery dates, payment terms).

"Incoterms" is a trademark of the International Chamber of Commerce.

Customs Convention on the International Transport of Goods Under Cover of TIR Carnets

The Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention) is a multilateral treaty that was concluded in 1975 to simplify and harmonize the customs administrative procedures and enhance the safety and security of international:

- Road transportation of goods.
- Multi-modal transportation of goods, including rail, inland waterway, and marine transportation, as long as some portion of the carriage takes place by road.

The TIR Convention enhances the efficiency of international shipments by allowing:

- The international carriage of customs-sealed vehicles and freight containers through member countries without extensive and time-consuming customs office checks.
- Comprehensive customs formalities to take place only at the country of origin and the county of final destination, rather than at the border of each country that the goods pass through before reaching their final destination.

While the US and the European Union are parties, the convention is unnecessary for intra-US and intra-European Union transportation of goods and is mostly used for the transportation of goods between the European Union and the countries of North Africa and the Middle East.

Overall implementation of the TIR system is the responsibility of the International Road Transport Union (IRU), an international umbrella trade association that represents the interests of bus, coach, taxi, and truck operators worldwide. At the national level, IRU member associations:

- Protect the customs revenue of each country by guaranteeing customs duties and taxes (customs guarantee) that may become due in any country that the goods travel through.

- Issue TIR Carnets to transportation companies. A TIR Carnet is a customs transit document used by a transportation company that is accepted by the customs authorities of participating countries and:

  - reduces the risk of providing inadequate documentation to customs offices through use of a single transit document;

  - allows the carrier to carry the specified shipment through the countries specified in the TIR Carnet, including the countries of departure and destination; and

  - verifies the existence of the customs guarantee.

World Trade Organization

The World Trade Organization (WTO) was created in 1995 as the successor to the **General Agreement on Tariffs and Trade** (GATT), a multilateral trade agreement that first came into force in 1948. The WTO is the international organization that supports the free flow of international trade by providing a forum and a framework for participating countries to:

- Negotiate and formalize trade agreements (WTO agreements) through regularly scheduled negotiating rounds and separate individual country commitments (schedules) to reduce tariffs and trade barriers in the international sale of goods, services, and intellectual property, on the basis of reciprocity, which helps:

  - domestic and foreign producers of goods and services to conduct and grow their business; and

  - participating countries to balance the twin goals of encouraging economic development and fostering environmental protection and social goals.

- Settle trade disputes between governments by interpreting and enforcing the WTO agreements. For information on the WTO dispute settlement process, see Practice Note, Dispute Settlement in the World Trade Organization.

The revisions to the GATT that created the WTO framework were approved and entered into force in the US as part of the Uruguay Round Agreements Act (19 U.S.C. §§ 3501-3624).

WTO agreements must be structured based on the general principles of a country's equal treatment of:

- Its trading partners.

- Foreign and local producers of goods and services.

A country's equal treatment of its trading partners is referred to as most-favored-nation (MFN) treatment. If a WTO member country charges a lower tariff for a product from one country, it must charge the same lower tariff on the same product type from all other WTO member countries. With limited exceptions, it must not discriminate regardless of the size or economic development of the exporting country. Limited exceptions include:

- Entering into bilateral free trade agreements like the US-Korea Free Trade Agreement or regional free trade agreements like the North American Free Trade Agreement (NAFTA) that apply only to goods traded within the limited member countries, but that discriminate against goods from countries that are not member countries (see Multilateral and Bilateral Free Trade Agreements).

- Creating limited trade barriers, such as antidumping and countervailing duties to counter unfair trade practices by specific countries (see Practice Note, Antidumping and Countervailing Duty Investigations).

- Giving developing countries preferential access to their markets.

A country's equal treatment of foreign and local producers of goods and services is referred to as "national treatment." While a WTO member may charge a tariff on imported goods, it generally must treat imported and locally produced goods equally after the imported goods have entered the domestic market. The same concept also applies to services.

Since the end of World War II, multiple negotiating rounds, including the GATT rounds, have been completed. The latest negotiating round, the Doha Development Agenda (Doha Round), was launched in November 2001. The Doha Round seeks to further reduce trade barriers to expand global economic growth and development in a variety of areas, including agriculture and services.

Trade Facilitation Agreement

The WTO Trade Facilitation Agreement (TFA) was negotiated as part of the Doha Round and entered into force on February 22, 2017, when it reached the ratification threshold of two-thirds of the WTO's membership (the US ratified the TFA in 2015). The TFA is first new multilateral agreement concluded since the WTO was created and is intended to simplify, harmonize, and expedite export and import processes across members' borders. For example, under the TFA governments must:

- Publish certain trade-related information online, including:
  - import, export, and transit procedures; and
  - documentation requirements.
- Provide interested parties an opportunity to comment on proposed laws and regulations before they go into effect.
- Provide advance rulings regarding the treatment of imported goods.
- Establish procedures for appealing administrative decisions.
- Provide transparency on fees and charges.
- Adopt procedures to expedite the release and clearance of goods, including, for example:
  - pre-arrival processing;
  - use of a "single window" for the submission of electronic trade documentation;
  - use of electronic payment;
  - creation of authorized economic operator programs; and
  - prompt release of perishable goods.

The TFA allows developing and least-developed countries to set their own timetables for implementing the TFA's provisions based on their technical and financial capacity. Developed countries, including the US, which was already in compliance, agreed to implement the TFA immediately.

For more information about the WTO, see Practice Note, US and International Regulation of Tariffs: World Trade Organization. For more information about non-tariff trade barriers, see Practice Note, Non-Tariff Trade Barriers on Goods.

Multilateral and Bilateral Free Trade Agreements

While the WTO's MFN or nondiscrimination principle prohibits tariff discrimination among trading partners, the WTO framework also allows member countries to negotiate bilateral, regional, or multilateral free trade agreements between two or more negotiating parties that rescind or lower tariffs on specified imported goods from the other participants.

The US maintains bilateral and multilateral free trade agreements with these 20 countries:

- Australia.
- Bahrain.
- Canada.
- Chile.
- Colombia.
- Costa Rica.
- Dominican Republic.
- El Salvador.
- Guatemala.
- Honduras.
- Israel.

- Jordan.
- Mexico.
- Morocco.
- Nicaragua.
- Oman.
- Panama.
- Peru.
- Singapore.
- South Korea.

North American Free Trade Agreement

The most well-known US regional agreement is the **North American Free Trade Agreement** (NAFTA), between Mexico, Canada, and the US, which went into effect in 1994. NAFTA eliminated trade barriers in North America and established one of the largest free trade areas in the world. This trade agreement creates preferential treatment for certain goods traded among the US, Canada, and Mexico, which means that:

- There are no tariffs or quotas on US-origin exports to Mexico and Canada.
- The US does not charge tariffs on imported products of Canadian or Mexican origin.

In addition to its tariff benefits, NAFTA contains provisions addressing:

- Non-tariff barriers, such as technical barriers to trade.
- Trade in services.
- Dispute settlement.
- Administration of laws.
- Environmental protection.
- Protection for foreign investment.
- Protection for intellectual property.

Congress implemented NAFTA in 1994 with the North American Free Trade Agreement Implementation Act (19 U.S.C. §§ 3301-3473). For a general overview of NAFTA, including the basic rules for determining if a good qualifies for NAFTA benefits, see Practice Note, Qualifying for NAFTA Preferential Treatment.

On May 18, 2017, the US Trade Representative (USTR) notified Congress of the US's intention to renegotiate NAFTA and the US commenced renegotiations with Canada and Mexico on August 16, 2017.

After more than a year of negotiations, the US, Mexico, and Canada reached an agreement on a new trilateral pact, the United States-Mexico-Canada Agreement (USMCA), to replace NAFTA. The three countries signed the USMCA on the sidelines of the G20 summit in Buenos Aires on November 30, 2018. For the text of the agreement, see USTR: United States-Mexico-Canada Agreement Text.

All three countries' legislatures must ratify the agreement for it to go into effect. The US Congress is expected to vote on the USMCA in 2019.

United States – Republic of Korea Free Trade Agreement

In response to pressure from the US, South Korea agreed in October 2017 to initiate negotiations in connection with amending the US-Korea Free Trade Agreement (KORUS), which was originally signed on June 30, 2007 and, following renegotiation, ratified by Congress in 2012.

On September 24, 2018, the US and South Korea signed a revised KORUS. For an overview of the modifications and amendments to the agreement, see USTR: New U.S. Trade Policy and National Security Outcomes with the Republic of Korea. These revisions did not require congressional approval because, unlike the USMCA, they were not negotiated under Congress's grant of Trade Promotion Authority (TPA). For more information on TPA, see Practice Note, US Trade Remedies and Other Import Relief Measures: Authority to Negotiate, Terminate, or Withdraw from Agreements. South Korea's parliament ratified the revised agreement on December 7, 2018, and it went into effect on January 1, 2019.

Trans-Pacific Partnership

On October 5, 2015, after years of negotiations, the US and the 11 other Pacific basin nations listed below reached an agreement on the Trans-Pacific Partnership (TPP), a proposed regional free trade agreement:

- Australia.
- Brunei Darussalam.
- Canada.
- Chile.
- Japan.
- Malaysia.
- Mexico.
- New Zealand.
- Peru.
- Singapore.
- Vietnam.

However, on January 23, 2017, President Trump signed an executive order withdrawing the US from the TPP (82 Fed. Reg. 8497). Without US participation, the TPP could not go into effect for any of the signatories. The TPP's provisions required that for the agreement to go into force, it must be ratified by at least 6 signatories accounting for 85 percent of the combined GDP of the original 12 signatories, and without US participation the 85 percent GDP threshold could not be met.

On November 11, 2017, on the sidelines of the Asia-Pacific Economic Cooperation (APEC) summit in Da Nang, Vietnam, the remaining 11 TPP signatories (TPP-11) released the core elements of a new pact without the US. The new agreement, known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), incorporates many provisions of the TPP, with the exception of certain provisions that were suspended. After further negotiations, the TPP-11 reached a final consensus and signed the CPTPP in Chile on March 8, 2018.

The CPTPP, which required ratification by at least six signatories, entered into force for Australia, Canada, Japan, Mexico, New Zealand, and Singapore on December 30, 2018 (60 days after the sixth signatory, Australia, completed domestic ratification procedures). Vietnam ratified the CPTPP in November 2018 and the agreement entered into force for that country on January 14, 2019. The CPTPP will enter into force for the other signatories 60 days after each ratifies the agreement.

Other countries including Colombia, South Korea, and Thailand have reportedly expressed interest in joining the CPTPP. Future US accession to the agreement under the Trump Administration is considered unlikely, however, as the President's TPP executive order:

- Stated that it is the Administration's intention to deal directly with individual countries in negotiating future trade agreements.
- Directed the USTR to pursue, wherever possible, bilateral trade negotiations.

Trade Negotiations with Japan, the European Union, and the United Kingdom

On October 16, 2018, in accordance with TPA requirements, the USTR notified Congress that the Trump Administration intends to negotiate three separate trade agreements with Japan, the European Union, and the United Kingdom (once it leaves the EU) (see USTR: Trump Administration Announces Intent to Negotiate Trade Agreements with Japan, the European Union and the United Kingdom).

Convention for the Unification of Certain Rules for International Carriage by Air

The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) is a multilateral treaty entered into force in 2003 that:

- Enhanced the uniformity and predictability of the rules relating to the rights and liabilities of international air carriers and shippers of cargo (as well as passengers and their baggage).
- Amended important provisions of the original Warsaw Convention (1929, as amended in 1955 in The Hague, Netherlands and in 1971 in Guatemala City).

More specifically, the Montreal Convention:

- Provides for strict liability (with limited exceptions) for air carriers.
- Provides liability limits for claims against air carriers that are:
  - reviewed and adjusted for inflation every five years; and
  - expressed in Special Drawing Rights (SDR), which is determined by the value of a basket of important currencies established by the International Monetary Fund.
- Provides a liability limit of 4,694 SDRs in the event a passenger is delayed.
- Provides a liability limit of 1,131 SDRs in the event of destruction or loss of, damage to, or delay in the delivery of a passenger's luggage.
- Provides a liability limit of 19 SDR per kilogram for the destruction, loss, or damage of cargo, which allows the carrier to:
  - streamline claims handling;
  - obtain less expensive cargo insurance; and
  - avoid protracted litigation.
- Provides an exclusive two-tiered liability regime for death or injury to passengers, including strict liability for claims in an amount up to 113,100 SDR per passenger and additional liability for amounts in excess of 113,100 SDR, unless the carrier can prove that the damage was:
  - not due to the negligence or wrongful act of the carrier; or
  - solely due to the negligence or wrongful act of another person.
- Provides a two-year limitation on claims from the time the carriage ends, regardless of when the damage is discovered.
- Provides defined venues for a claimant to bring a lawsuit against the air carrier.
- Facilitates the use of electronic documentation and data messaging, such as electronic air waybills (e-AWBs) and other documents of carriage.

PRODUCTS

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