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Harmonizing the Conclusion and Performance of International Sale of Goods Contracts by Business Entities with the CISG and the Incoterms® 2020 Rules in the Context of Uzbekistan's WTO Accession

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Abstract

As the Republic of Uzbekistan advances toward membership in the World Trade Organization (WTO), the volume and legal complexity of cross-border commercial transactions concluded by its business entities are set to grow substantially. This article examines how the practice of concluding and performing international contracts for the sale of goods can be harmonized with two principal instruments of transnational commercial law: the United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna 1980), to which Uzbekistan has been a Contracting State since 1 December 1997, and the Incoterms® 2020 rules of the International Chamber of Commerce (ICC). The study clarifies the distinct yet complementary functions of the two instruments — the CISG supplying the substantive law governing contract formation, the parties' obligations and remedies, and the Incoterms rules allocating delivery, the passing of risk and the division of costs — and identifies the principal points of interaction and potential friction between them. It argues that WTO accession, by consolidating a transparent and non-discriminatory trade regime, sharpens the practical need for Uzbek enterprises to employ these instruments competently and deliberately. The article concludes with recommendations for aligning national contracting practice, model documentation and professional capacity with international standards.

Keywords: International sale of goods; CISG; Incoterms® 2020; WTO accession; Uzbekistan; passing of risk; party autonomy; harmonization of commercial practice.

Introduction

International trade law operates on two interlocking planes. The first regulates the conduct of States toward one another — the reduction of tariffs, the elimination of discriminatory measures and the guarantee of transparency — and finds its principal expression in the law of the World Trade Organization. The second regulates the legal relationship between the private parties who actually buy and sell goods across borders, and is shaped above all by the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Incoterms® rules of the International Chamber of Commerce. The two planes are not independent: a liberalized, rules-based trade regime at the inter-State level can deliver its intended benefits only if the micro-level contracts through which trade is conducted are themselves drafted and performed in accordance with predictable international standards.

For the Republic of Uzbekistan this interdependence has become acutely practical. Having applied for WTO membership in 1994 and intensified its accession negotiations since 2020, the country is now in the concluding stages of that process and has aligned a large body of legislation with WTO requirements [1]. At the same time, Uzbekistan has for more than two decades been a Contracting State to the CISG, the Convention having entered into force for it on 1 December 1997 [2]. The coincidence of a maturing multilateral trade commitment with long-standing participation in the uniform law of international sales creates both an opportunity and an obligation: the opportunity to integrate national business practice fully into the global trading system, and the obligation to ensure that Uzbek enterprises conclude and perform their export and import contracts in a manner consistent with the CISG and the Incoterms rules.

This article pursues three objectives. First, it explains why the approaching WTO membership intensifies the need for disciplined contract practice. Second, it delineates the respective spheres of the CISG and the Incoterms® 2020 rules and analyses the points at which they interact and occasionally generate friction. Third, drawing on that analysis, it offers concrete recommendations for harmonizing the contracting practice of Uzbek business entities with these instruments.

2. The WTO Accession Context and the Demand for Disciplined Contract Practice

WTO membership is frequently described in terms of market access and tariff schedules, but its deeper significance for private commercial practice lies in the predictability and non-discrimination it institutionalizes. The most-favoured-nation and national-treatment principles, together with the transparency obligations of the WTO agreements, generate a more stable regulatory environment in which foreign counterparties can transact with greater confidence. The anticipated result is a growth in the number and value of cross-border sale transactions undertaken by Uzbek enterprises, as well as an increase in the diversity of their trading partners.

That growth has a direct doctrinal consequence. WTO law does not itself govern the private contract between a Uzbek exporter and a foreign buyer; it neither determines when the contract is concluded, nor allocates the risk of loss, nor specifies the remedies for breach. Those questions are answered by the law applicable to the contract and by the commercial terms the parties adopt. As the external trade regime becomes more open, the internal quality of contracting — the clarity with which obligations, risk and costs are allocated — becomes the decisive factor in whether Uzbek businesses capture the gains of liberalization or expose themselves to avoidable disputes.

In this sense, accession to the WTO and competent use of the CISG and Incoterms are complementary components of a single modernization agenda.

3. The CISG as the Governing Substantive Law of Cross-Border Sales

3.1 Sphere of application and Uzbekistan's participation

The CISG provides a uniform substantive law for international sales, sparing the parties the uncertainty of identifying and applying an unfamiliar national code. Under Article 1(1), the Convention applies to contracts of sale of goods between parties whose places of business are in different States, either where both States are Contracting States (Article 1(1)(a)) or where the rules of private international law lead to the application of the law of a Contracting State (Article 1(1)(b)). Articles 2 and 3 exclude certain transactions — notably consumer sales and most contracts in which the preponderant obligation is the supply of labour or services — while Article 4 confines the Convention to the formation of the contract and the rights and obligations of the parties, leaving questions of validity and of the transfer of property to the otherwise applicable national law.

Because Uzbekistan is a Contracting State, a contract between a Uzbek enterprise and a counterparty located in another Contracting State will, as a matter of course, be governed by the CISG unless the parties have effectively excluded it. This default applicability is of the greatest practical importance: a Uzbek business that is unaware of the Convention does not thereby escape it, but rather performs a CISG-governed contract without understanding the rules that bind it. The first step toward harmonization is therefore simply awareness that the CISG is, by default, the governing law of most of the country's international sales.

3.2 Party autonomy and the opt-out question

Article 6 enshrines party autonomy: the parties may exclude the application of the Convention or, subject to Article 12, derogate from or vary the effect of any of its provisions. This freedom is double-edged. It allows sophisticated parties to tailor the legal regime to their transaction, but it also permits an uninformed or poorly advised party to exclude the CISG in favour of a national law with which neither side is familiar, or to leave the matter unaddressed and thereby accept the Convention by default. A recurrent weakness in regional practice is the reflexive exclusion of the CISG in favour of domestic law, often without any reasoned assessment of whether the Convention's balanced, internationally tested rules would in fact serve the party better. Harmonized practice requires that the choice to apply or exclude the CISG be a conscious, reasoned decision recorded expressly in the contract.

3.3 Formation, obligations and remedies

Substantively, the CISG supplies a complete framework for the life of the contract. Part II governs formation through offer and acceptance; Part III defines the obligations of the seller (delivery, conformity of the goods and transfer of documents, Articles 30–44) and of the buyer (payment and taking delivery, Articles 53–60), and sets out a graduated system of remedies. Central to that system is the concept of fundamental breach in Article 25, which conditions the right to avoid the contract under Articles 49 and 64; the availability of damages under Articles 74–77, subject to the duty to mitigate; the mechanism of the additional period for performance (Nachfrist) in Articles

47 and 63; and the possibility of requiring performance. Crucially for the present discussion, the Convention also contains default rules on the passing of risk in Articles 66 to 70 — the very subject on which the Incoterms rules speak, and hence the principal locus of their interaction.

4. The Incoterms® 2020 Rules: The Commercial Grammar of Delivery, Risk and Cost

The Incoterms rules, maintained by the International Chamber of Commerce and most recently revised in the Incoterms® 2020 edition in force since 1 January 2020, are a set of standardized three-letter trade terms that express, in compact form, the parties' respective obligations in the delivery of goods. Each rule allocates four matters: the point and manner of delivery; the moment at which the risk of loss or damage passes from seller to buyer; the division of costs, including carriage, insurance, loading and unloading; and the responsibility for export and import clearance formalities.

The 2020 edition comprises eleven rules arranged in two groups. Seven rules may be used irrespective of the mode of transport — EXW (Ex Works), FCA (Free Carrier), CPT (Carriage Paid To), CIP (Carriage and Insurance Paid To), DAP (Delivered at Place), DPU (Delivered at Place Unloaded) and DDP (Delivered Duty Paid). Four rules are reserved for sea and inland waterway transport — FAS (Free Alongside Ship), FOB (Free on Board), CFR (Cost and Freight) and CIF (Cost, Insurance and Freight). Among the notable features of the 2020 revision are the replacement of the former DAT term by DPU to emphasize delivery after unloading at any named place; the differentiation of the required level of insurance cover, with CIP now calling for the comprehensive Institute Cargo Clauses (A) while CIF retains the minimum Clauses (C); an option under FCA for the parties to arrange for an on-board bill of lading; and a consolidated presentation of each party's costs.

It is equally important to note what the Incoterms rules deliberately do not address. They do not constitute a contract of sale, nor do they govern the transfer of property in the goods, the price or the method of payment, the consequences of breach, or the law and forum applicable to disputes. They presuppose a contract of sale governed by some applicable law and operate within it as an agreed shorthand for the mechanics of delivery. This self-limitation is precisely what makes the Incoterms rules compatible with — indeed dependent upon — a background sales law such as the CISG.

5. The CISG–Incoterms Interface: Complementarity and Friction

The relationship between the two instruments is best understood as one of layered complementarity. The CISG furnishes the legal foundation of the contract — its formation, the content of the parties' core obligations and the remedies for their breach — while an incorporated Incoterms rule specifies the operational detail of one obligation, namely delivery, together with its attendant consequences for risk and cost. Far from competing, each supplies what the other omits. The legal bridge between them is found in the CISG's own provisions on party autonomy and usages. By virtue of Article 6, the parties may derogate from the Convention's default rules, so that an agreed Incoterms rule displaces the CISG's provisions on the place of delivery (Article 31) and, most significantly, on the passing of risk (Articles 66–70) to the extent of any inconsistency. Moreover, under Article 9(2) the parties are presumed, unless otherwise agreed, to have impliedly made applicable to their contract usages of which they knew or ought to have known and which

are widely known in international trade and regularly observed. The Incoterms rules are commonly regarded as the paradigm of such usages, with the consequence that a reference to a recognized trade term may be given effect even where the parties have not reproduced its full content. Prudent practice, however, does not rely on implication: the trade term should be stated expressly, together with the named place or port and the identification of the edition, in the canonical form — for example, "CIF Hamburg Incoterms® 2020".

The principal point of substantive contact concerns the passing of risk. The CISG and the chosen Incoterms rule address the same question, and for harmonized practice it must be clear that the Incoterms allocation, as an agreed term, prevails over the Convention's default. In the great majority of cases the two are consonant: the CISG's rule in Article 67, under which risk passes when the goods are handed over to the first carrier in a contract involving carriage, corresponds closely to the logic of the FCA, CPT and CIP terms, while Article 69 addresses the residual situations that terms such as EXW are designed to govern. Friction arises not from doctrinal contradiction but from imprecise drafting — for instance, the use of a trade term without a named place, the citation of a term without its edition (so that it is unclear whether the 2010 or 2020 version applies), or the combination of a maritime term such as FOB with carriage by air or road, for which it is unsuited. Each of these ambiguities is a drafting failure that harmonized practice can eliminate.

A further zone of interaction concerns documentary and ancillary obligations. The Incoterms rules specify which party must procure transport documents, arrange insurance and complete customs formalities, whereas the CISG, in Articles 30 and 34, obliges the seller to hand over the documents relating to the goods as required by the contract. Read together, the Incoterms rule defines the content of the documentary obligation and the CISG supplies the legal consequence of its breach. The insurance dimension is particularly salient under the 2020 edition: a Uzbek exporter selling on CIP terms must now arrange the broader Institute Cargo Clauses (A) cover, a change that should be reflected in both pricing and contract drafting.

6. Harmonizing the Contract Practice of Uzbek Business Entities: Problems and Recommendations

Against this doctrinal background, several recurring weaknesses in the contracting practice of business entities in transition economies — Uzbekistan among them — may be identified. Contracts are sometimes concluded on the basis of inherited templates that pre-date the country's accession to the CISG and do not reflect its rules. Trade terms are invoked loosely, without a named place or a specified edition, or are mismatched with the actual mode of transport. The applicability of the CISG is frequently neither understood nor consciously addressed, so that the Convention applies by default while the parties proceed as though it did not, or is excluded reflexively without analysis. Dispute-resolution clauses are often underdeveloped, notwithstanding that Uzbekistan has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1996, which makes international commercial arbitration a realistic and enforceable option.

On the basis of the foregoing analysis, the following measures are recommended to harmonize national practice with the CISG and the Incoterms® 2020 rules.

(1) Express and version-specific incorporation of trade terms. Every international sale contract should state the applicable Incoterms rule in full canonical form — the three-letter term, the named place or port, and the express designation "Incoterms® 2020" — so as to remove any doubt as to the allocation of delivery, risk and cost and as to the edition intended.

(2) A conscious decision on the CISG. The parties should decide deliberately whether the Convention is to govern their contract, and record that decision expressly, rather than allowing it to apply or to be excluded by inadvertence. Where the CISG is retained, any intended derogations — for example, as to the passing of risk governed by the chosen trade term — should be stated clearly so that the interaction with Articles 66–70 is unambiguous.

(3) Development of model contracts and bilingual templates. Chambers of commerce, ministries and professional associations should promulgate standard-form international sale contracts and clause libraries, available in Uzbek, Russian and English, that integrate the CISG and the Incoterms® 2020 rules correctly and illustrate their proper combination.

(4) Capacity-building for enterprises and the legal profession. Targeted training for exporters and importers — especially small and medium-sized enterprises — and for lawyers, judges and arbitrators will build the practical competence required to draft, perform and adjudicate CISG-and-Incoterms-based contracts. Familiarity with the growing body of CISG case law and with ICC guidance materials is central to this effort.

(5) Alignment of customs and administrative practice. The export and import clearance responsibilities allocated by the Incoterms rules should be matched by corresponding administrative procedures. The transparency and predictability that WTO accession demands at the regulatory level should be mirrored by consistency between the parties' contractual allocation of clearance duties and the actual operation of customs practice.

(6) Fuller use of international dispute-resolution mechanisms. Contracts should contain well-drafted arbitration clauses that take advantage of Uzbekistan's participation in the New York Convention, thereby securing the cross-border enforceability of awards and reinforcing the confidence of foreign counterparties.

Uzbekistan's forthcoming accession to the World Trade Organization will open its economy more fully to international exchange, but the benefits of that openness will be realized only at the level of the individual contract. The CISG and the Incoterms® 2020 rules together furnish a coherent and internationally accepted architecture for international sale transactions: the Convention supplies the substantive law of formation, obligation and remedy, while the Incoterms rules provide the agreed grammar of delivery, risk and cost. Their relationship is one of complementarity, mediated by the CISG's own principles of party autonomy and trade usage, and the friction that occasionally arises between them is almost always the product of imprecise drafting rather than genuine doctrinal conflict.

For Uzbek business entities, harmonization is therefore less a matter of legislative reform than of disciplined practice: conscious choice of the governing law, precise and version-specific use of

trade terms, well-constructed documentation and competent professional support. Pursued in parallel with WTO accession, such practice will allow the country's enterprises to transact on equal terms with their international counterparts and to convert the promise of a more open trade regime into secure and predictable commercial relationships.

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