



# **SURVEY ON THE APPLICATION OF CISG IN THE DISPUTE SETTLEMENT OF INTERNATIONAL GOODS PURCHASE CONTRACTS CONTRACTATIONS IN VIETNAMESE ENTERPRISES – CURRENT SITUATION AND SOLUTIONS (\*)**

*Nguyen Hoang Nam<sup>1,2</sup>*

<sup>1</sup> *Member of SEAYLP, U.S. Embassy & Consulate in Vietnam*

<sup>2</sup> *Student at Faculty of Law, College of Economics, Law and Government, UEH - CELG*

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## **Abstract:**

CISG is the most successful international convention in the field of content law of international justice, with 94 member states. The research objective focuses on understanding and evaluating the current situation of the application of CISG in the settlement of international goods sale and purchase contracts disputes in Vietnamese enterprises. Research data was collected through questionnaires for businesses in Vietnam with 175 responses meeting the statistical standards. Research results show that currently most Vietnamese enterprises choose the Law applied in negotiation is Vietnam Law, value of the contract dispute in the international sale of goods between parties of big value and the willingness to learn and apply CISG in businesses in Vietnam is very high. Thereby, proposing a number of recommendations on encouraging Vietnamese enterprises to apply CISG in the settlement of international goods sale and purchase contracts disputes in the coming time.

**Keywords:** *CISG, dispute settlement, enterprises, international sales contracts, Vietnam.*

## **1. INTRODUCTION**

The United Nations Convention on Contracts for the International Sale of Goods - Vienna Convention (1980) (abbreviated as CISG) is one of the conventions that Vietnam has recently acceded to to contribute to the elimination of barriers. legal barriers to international trade and promote the development of international trade. In the ASEAN region, three countries have joined the CISG, including: Singapore, Vietnam and Laos. Joining CISG brings the consistency between the law on international goods trading of Vietnam and many countries around the world. Up to now, CISG is the most successful international convention in the field of content law of international justice, with 94 member countries. Nine out of the ten largest economies in the world

are members of the convention, with the only exception being the United Kingdom. The CISG convention covers more than 80% of global trade.

In practice, international contract disputes for goods are often caused by a variety of reasons, but most often a breach of contract by the buyer or the seller or both the buyer and the seller. Based on relatively clear provisions on the rights and obligations of the parties, the CISG presents flexibility in allowing states to sign exceptional options, typically such as the application or the exclusion of application. However, Vietnamese enterprises applying CISG in resolving disputes in international goods sale and purchase contracts are not really widespread.

Many previous studies have studied the application of CISG in their country such as Schwenger (2010) study on the application of CISG under the provisions of national law, Eunice's (2019) study on the university. The parties of the contract cannot be based on the freedom to choose to use the CISG as the law governing the contract if the countries of the other party are not a CISG signatory or Dawwas & Shandi (2011) in assessment of the applicability of the CISG for in Arab.

In Vietnam, there are not many studies on CISG, especially research on application of surveys in enterprises. A typical study is that of Trinh (2018) examining the international nature of contracts for international sales of goods and the scope of application of the CISG. Therefore, with the survey of enterprises in Vietnam, this study will focus on understanding and evaluating the current situation of applying CISG in the settlement of international goods sale and purchase contract disputes in enterprises. Thereby, giving some recommendations on encouraging Vietnamese enterprises to apply CISG in the settlement of international goods sale and purchase contracts disputes in the coming time.

## **2. CURRENT SITUATION OF CISG APPLICATION IN VIETNAMESE ENTERPRISES**

After 4 years of implementing CISG, the number of disputes related to international commercial contracts in Vietnamese enterprises decided to settle by VIAC in accordance with the CISG regulations is not much, specifically as follows:

**Table 1. Statistics on selection of dispute resolution contracts**

<b>Description</b>	<b>Total</b>	<b>Rate (%)</b>
Number of international goods sale and purchase lawsuits from January 1, 2017	85	100
Number of contract disputes applying CISG	<b>6</b>	<b>7.06</b>
Number of contract disputes applied by Vietnamese Law	79	92.94
Number of contract disputes applied by Foreign Laws	0	0
Number of contract cases applicable to the application of Vietnamese Law	54	63.53
Number of contract applicable to the application of Vietnamese Law	31	36.47

*(Source: PhD Tran Thanh Tam)*

The total number of CISG cases applied by VIAC in international dispute contracts is only

6/85 cases, accounting for 7.06% of the total number of cases resolved at VIAC regarding international commercial contract disputes. This is a pretty low rate. There are 79/85 lawsuits applying Vietnamese Law, equivalent to the rate of 92.94%. Notably, out of 79 cases of dispute settlement by Vietnamese Law, there are only 54 contract cases applicable to Vietnamese Law. So the remaining cases for international goods sale and purchase disputes settlement are considered and applied by competent agencies such as courts and arbitration under the Vietnamese Law.

This shows that businesses in Vietnam and also competent agencies such as the Court and Arbitration are not really open to bring CISG to apply in international disputes settlement of goods. In Vietnamese businesses, both the agency with jurisdiction to adjudicate the judiciary still carries a lot of caution in resolving disputes by domestic law. The main reason is that Vietnamese enterprises do not fully understand the value and importance of protecting the benefits that CISG brings. This is considered as one of the key factors influencing the application of CISG in Vietnamese enterprises. In addition, it is essential to understand the laws, especially the CISG regulations on international goods trading in general and the resolution of disputes on international sales contracts in particular. Currently, Vietnamese businesses, when dealing with foreign partners, do not pay much attention to the choice of law when conflicts and disputes arise. On the other hand, on the current negotiating table, Vietnamese businesses are often weak when negotiating the application of the Law due to their limited skills in foreign language communication, as well as negotiation and negotiation skills in transactions between the two sides. This will lead to risks if a dispute arises and the contract does not specify the applicable law, it will cause many disadvantages for Vietnamese enterprises.

### **3. RESEARCH RESULTS**

The research uses a combination of surveys and Google form software as a tool to collect data from businesses operating in relation to international commerce. The survey collected 205 responses, through observing, selecting all 175 satisfactory responses in the statistics. The detailed survey contents are in the attached appendix.

**Table 2. Survey results of enterprises in Vietnam**

<b>Content</b>	<b>Number of choices</b>	<b>Rate (%)</b>
<b>1. Charter capital</b>		
Under 1 billion	12	6.86
Over 1 billion and under 5 billion	44	25.14
Over 5 billion and under 10 billion	25	14.29
Over 10 billion	94	53.71
<b>2. Revenue in 2019 of businesses</b>		
Under 1 billion	2	1.14
Over 1 billion and under 10 billion	16	9.14
Over 10 billion and under 50 billion	28	16

Over 50 billion	129	73.72
<b>3. The level of awareness of the CISG of companies</b>		
Applying CISG in businesses	25	14.28
Have heard and learned	13	7.43
Having heard of but not yet found out	48	27.43
Unknown to CISG	89	50.86
<b>4. Laws applied in the negotiation of the parties</b>		
Applying CISG	18	10.29
Application of Vietnamese Law	95	54.29
Application of the Law of the partner country	57	32.57
Application of Laws of Third Countries	5	2.85
<b>5. Actual dispute resolution by CISG</b>		
Addressed in accordance with CISG regulations	4	2.29
Not applicable yet	171	97.71
<b>6. Value of disputed contracts of businesses</b>		
Under 10 billion	-	-
Over 10 billion and under 50 billion	1	25
Over 50 billion	3	75
<b>7. Willingness to learn and apply the CISG</b>		
Very ready	164	93.72
Ready	9	5.14
Neutral	2	1.14
Do not want to learn and apply CISG in the business	-	-

(Source: Authors' statistical results)

Survey results at Table 2 show that surveyed businesses have different charter capital, including: 6.86% of businesses with charter capital of less than 1 billion VND, 25.14% of businesses with charter capital from 1 to less than 5 billion VND, 14.29% of enterprises have charter capital of 5 to less than 10 billion VND and 53.71% of enterprises have charter capital of over 10 billion VND.

There are also significant differences in the revenue of the above enterprises, including: 1.14% of businesses with total revenue in 2019 below 1 billion VND, 9.14% of businesses with revenue from 1 billion VND to less than 10 billion VND, There are 16% of businesses with sales of more than 10 billion VND and under 50 billion VND and 73.72% of businesses surveyed achieving revenue of over 50 billion VND.

Statistics on the level of knowledge of CISG of enterprises, up to 50.86% of enterprises responded that they did not know CISG, 7.43% of enterprises had heard about and learned, 27.43% of enterprises had heard about it but did not find out understand and 14.28% of businesses are applying CISG in businesses. Thereby, the survey results show that the number of enterprises that do not know CISG currently still accounts for a relatively high percentage.

Statistics on the selection of Laws applied in the negotiation of the parties, 54.29% of enterprises will apply the Law of Vietnam to make law in the negotiation and settlement of international commercial contracts on goods sale and purchase, the rest are the options. apply CISG, Law of partner country and Law of third country at the rate of 10.29%, 32.57% and 2.85% respectively.

Regarding the fact of resolving disputes by CISG, 2.29% of enterprises surveyed resolved their disputes on international commercial contracts on goods purchase and sale with CISG regulations. In which, the value of the disputed contract is over 50 billion VND, accounting for 75%. This shows that when disputes have been adjudicated, most of them have a very large contract value.

If we compare the proportion of enterprises that do not know the CISG and the rate of the Law selected in the negotiation between the parties mainly applying Vietnamese Law, it can be seen that these two rates are equal. Most of the international commercial contracts for goods sale and purchase, in negotiating to choose the Law on Dispute Resolution, Vietnamese enterprises often "prefer" Vietnamese law because most Vietnamese enterprises are only familiar with the Law. the home country, has not explored and applied the general international regulations yet.

In addition, according to statistics on the willingness to learn and apply CISG of enterprises in Vietnam, the author found that out of 175 surveyed enterprises, there are 164 enterprises very willing to learn and apply. CISG in the future, equivalent to 93.72%; There are 9 enterprises at willing level, accounting for 5.14% and only 2 enterprises are neutral, accounting for 1.14%. There is no business that does not want to learn and apply CISG in the survey. This shows that Vietnamese businesses are willing to apply CISG if there is research and encouragement from the competent authorities in Vietnam.

#### **4. SOME RECOMMENDATIONS TO PROMOTE THE APPLICATION OF CISG IN VIETNAMESE ENTERPRISES IN THE COMING TIME**

Through the research results, the author found that there are still many enterprises who are hesitant to learn and apply international legal regulations in general and CISG in particular. It is necessary to remove the fear of change to adapt to the global game when Vietnam is a member of many international conventions, treaties and treaties. The key to this problem is to help businesses better understand the values and importance that CISG brings in clearly protecting the rights and interests of the parties in international contracts for sale of goods.

First, considering the application of CISG in the settlement of international goods sale and purchase contracts as a prerequisite to ensure fairness and safety, thereby facilitating fairer competition in the international arena. practice. To do this, Vietnamese enterprises, including competent agencies such as courts and arbitration, need to be more open in applying international practices and treaties to trials in Vietnam.

Second, to raise awareness of Vietnamese enterprises on the application of CISG in the settlement of international goods sale and purchase contracts disputes, focusing on international commercial enterprises in localities that do not have the conditions to continue. approach, find out. In particular, provided that Vietnam is a country with a high proportion of agricultural, forestry and fishery exports, it is necessary to further propagate about the benefits of the CISG in

negotiation and dispute settlement. Vietnamese businesses should actively learn and adapt to the international business environment.

Third, learn and research about CISG in the coming time to improve the level of Vietnamese businesses on the provisions of the CISG, through sending legal staff in the business to participate CISG intensive training course, participating in live and online seminars organized by prestigious organizations such as Hanoi Law University, Ho Chi Minh City University of Law, Chamber of Commerce and Industry Vietnam (VCCI),...

Fourth, the Vietnamese state needs to have appropriate policies to support Vietnamese businesses to access CISG as an essential and effective tool for a modern, unified legal basis and relationships. The system of international trade in goods is fair and stable, avoiding disputes arising in the coming time. Research results also show that Vietnamese enterprises are ready to learn and apply CISG. This is an initial advantage to contribute to the application of CISG in business practice.

Fifth, the issue of promoting the application of CISG in Vietnamese enterprises should be considered for a long time. Therefore, the popularization of CISG knowledge more widely in Universities, especially those with Faculties of Commerce in particular and economics in general, is extremely necessary. Students in the era of global integration and commercialization need to be fully equipped with knowledge of international trade, including the CISG regulations on international contracts for the sale of goods.

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## APPENDIX

1. How much is the charter capital of your business?

- Under 1 billion
- Over 1 billion and under 5 billion
- Over 5 billion and under 10 billion
- Over 10 billion

2. How much revenue in 2019 is your business?

- Under 1 billion
- Over 1 billion and under 10 billion
- Over 10 billion and under 50 billion
- Over 50 billion

3. Are you aware of the Vienna Convention (CISG)?

*Note: Vienna Convention (1980) is the United Nations Convention on contracts for the international sale of goods.*

- Applying CISG in businesses
- Have heard and learned
- Having heard of but not yet found out
- Unknown to CISG

4. In negotiating and settling disputes on international commercial contracts on goods purchase and sale, what legal provisions does your business usually apply?

- Applying CISG
- Application of Vietnamese Law
- Application of the Law of the partner country
- Application of Laws of Third Countries

5. Has your business ever resolved disputes on international sales contracts that apply CISG regulations?

- Addressed in accordance with CISG regulations
- Not applicable yet

6. If you have ever resolved a dispute according to CISG regulations, what is the value of the disputing contract? (Answer this question if question 5 is selected “Addressed in accordance with CISG regulations”)

- Under 10 billion
- Over 10 billion and under 50 billion
- Over 50 billion

7. If you have the conditions to apply CISG, are you willing to learn and apply the CISG as a regulation to resolve international commercial contracts on goods purchase and sale?

- Very ready
- Ready
- Neutral
- Do not want to learn and apply CISG in the business