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GLOBAL K: BRAZIL AND THE CISG

By Kprofs2013

The United Nations Convention on Contracts for the International Sale of Goods ("CISG") continues to collect state parties. The CISG will enter into force for Brazil on 1 April 2014, and for Bahrain on 1 October 2014. With that, Brazil and Bahrain will become the 79th and 80th States Party to the CISG, respectively.

The delay in entry into force is built into CISG art. 99, and does not suggest any particular caution on the part of either state. What may require some explanation, however, is why it took almost 25 years after Brazil approved the final text of the CISG and signed the Final Act of the Conference, before it finally acceded to the convention on 5 March 2013. According to local commentators, a large part of the delay is due to extraneous political considerations. Legislative inaction on this front was common under a previous authoritarian political system, as the regime was skeptical of – if not outright hostile to – multilateral initiatives to advance private international law. Efforts by Brazilian academics, the Bar Association of Brazil, and business interests progressively pressed for Brazil to engage in such initiatives, and the end result was that Brazil rejoined the Hague Conference on Private International Law in 2001 and began the internal process for accession to the CISG in 2011.

Brazil's accession is a particularly significant development. Brazil's economy is the largest among Latin American states, and the second largest in the Western Hemisphere. The existence of a common set of default rules governing trade in goods, irrespective of the significant differences in U.S. and Brazilian legal traditions, creates potential efficiencies for the future of economic relations between the two states. Furthermore, from the perspective of economic development policy, the existence of modern, uniform framework for contracts for the sale of goods involving one of the fastest-growing major economies in the world is a positive feature.

The increasing likelihood that regional contract activity in the Americas may implicate the CISG underscores the need for U.S. academics to ensure that our students at least understand that the convention exists as part of U.S. contract law. This generally applicable source of federal contract law constitutes the default rules that apply to an expanding range of regional contract situations. It has been a commonplace that parties can always make a contractual choice of law that would remove the CISG from the mix. However, what you don't know can't be planned against, and who is to say that local law – as opposed to the CISG default

rules – is necessarily optimal for a given contracting situation?

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