

International Sales Conventions Act - Briefing Note 1998

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Briefing Note: Uniform International Sales Conventions Act

The *Uniform International Sales Conventions Act* is intended to implement the *Convention on the Limitation Period in the International Sale of Goods* (the *Limitation Convention*), opened for signature at New York on June 14, 1974, and the *Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods* (the *Amended Limitation Convention* and the *Protocol*, opened for signature at Vienna on April 11, 1980). The *Uniform International Sales Conventions Act* also implements the *United Nations Convention on Contracts for the International Sale of Goods* (the *Sales Convention*), opened for signature at Vienna on April 11, 1980.

Contrary to the *Limitation Conventions* which have not yet come into force for Canada, the *Sales Convention* came into force for Canada on May 1, 1992 and applies uniformly across Canada since February 1, 1993 as it is implemented through statutes that adopted the *Uniform International Sale of Goods Act* of the Uniform Law Conference of Canada (ULCC). Because the *Uniform International Sales Conventions Act* was adopted by the ULCC in August 1998 the *Uniform International Sales of Goods Act* has been withdrawn.

The Conventions

The *Limitation Conventions*, which entered into force internationally on August 1, 1988, grew out of the work of UNCITRAL to unify international sales law. In June 1998, there were 24 States party to the *Limitation Convention* of 1974, and 17 States party to the *Amended Limitation Convention*, including, in both cases, our North-American trade partners, the United States and Mexico (in force since December 1994). The *Limitation Conventions* dovetail with the *Sales Convention*. There is substantial similarity between the three *Conventions*, in particular the articles setting out the sphere of application, declarations and reservations, the federal State clause, and the final clauses.

The purpose of the *Limitation Conventions* is to eliminate all disparities in the national laws governing limitations on the initiation of legal proceedings arising from contracts for the international sale of goods, as these disparities can create hardship both in cases where meritorious claims are statute-barred by a very short limitation period, and where parties are left open to liability for an inordinately long time in jurisdictions with very long limitation periods. The *Limitation Conventions* establish a uniform prescription period of four years for commercial litigation.

The *Sales Convention* establishes uniform rules for the international sale of goods which will

apply in the absence of any expression to the contrary by the parties to the sales contract. While the *Convention* applies to contracts for the sale of goods, it excludes the sale of goods for personal use, sale by auction, judicial sales, and the sale of stocks, ships, aircraft or electricity. The provisions of the *Convention* deal with the formation of the contract and the rights and obligations of the seller and buyer. The *Convention* does not govern the validity of the contract or its terms, nor does it deal with the seller's liability outside the contract. As of November 19, 1998, 53 States are party to the *Convention*.

The Uniform International Sales Conventions Act

Section 1 sets out the definitions. Section 2 deals with the interpretation of the Act and follows Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* which deal with the general rule and supplementary means of interpretation of international treaties. Section 3 provides for the extension of the application of the *Limitation Conventions* to the jurisdiction adopting the Act. Section 4 stipulates that the Crown or the government, whether in relation to a province or a territory, is bound by the Act. Section 5 provides for the application of the *Sales Convention*. Sections 6 and 7 provide for the application of the *Limitation Conventions* and the day they come into force. Section 8 reminds parties to a contract for the international sale of goods that the *Limitation Conventions* and the *Sales Convention* will automatically apply to contracts that fall within their scope of application. However, the *Conventions* provide that parties may exclude its application (Article 3 of the *Limitation Conventions* and Article 6 of the *Sales Convention*) or limit its application (Article 6 of the *Sales Convention*). Section 8 specifies that an express exclusion will always result in the non-application of the excluded *Convention*. Section 9 deals with the question of inconsistency between the Act and any other law and provides that the Act will prevail to the extent of the inconsistency. Section 10 sets the regulation power. Section 11 provides for the publication of the day the *Conventions* come into force. Section 12 provides that the Act that adopted the *Uniform International Sale of Goods Act* is repealed or amended.