International Trade Rules

What Every Exporter Should Know

Jean Francois Bourque

ITC Senior Advisor on
Legal Aspects of International Trade

On average, almost everyone has witnessed the birth of two nations each year of his or her existence. So if you are 50 years old, then about 100 new countries will have been created since your birth. Membership of the United Nations (UN) grew from 51 original members in 1945 (there were 74 nation-states at that time) to 191 in 2002.

The magnitude of this process is unprecedented. Now think what this means in terms of business laws: 191 or more countries equal the same number of legal systems.

Another crucial change also occurred in the last 50 years. For the first time in history, growth in world merchandise exports has completely outpaced growth in world output. *Merchandise trade increased 18 fold while world merchandise output grew eightfold. Between 1990 and 2001 alone, world merchandise exports grew by 6%, while total merchandise production increased by only 2.4%.*

The main legal problem for companies in these cross-border times is that goods and services flow across borders but do not erase them. Businesses have to cope with a much more complex legal mosaic now than 50 years ago. No one at least in the legal world foresaw these events. The UN's founders instructed the architects of the UN buildings in New York to allow for an expansion to some 70 members only. Similarly, no systematic way to cope with transporter trade law was planned. Business people tend to think that lawyers complicate issues. But they fail to understand that, in the absence of an international legislature, there is no such thing as a truly "International Law".

Twenty years ago, business law was essentially associated in people's minds with a particular nation. Every exporter has to realise that this is no longer the case. A variety of international rules often outside the scope of nation law are also shaping the way trade is conducted.

Six New Types of International Trade Rrules and Practices

Although the existence of some 2001 legal systems has made international business more complex, the legal landscape is not so bleak as one might imagine. Through trial and error, at least six different processes have developed to harmonise the conduct of international business. These are international trade usages, commercial treaties, model contracts, model laws, regional trade laws and out-of-court dispute settlements.

International Trade Usages

International Commercial Terms, known as Incoterms, were the first major achievement in standardising trade practices. Developed in1936 by the International Chamber of Commerce (ICC), Incoterms guide the buyer and seller by allocating transport costs and risks, as well as determining responsibility for insurance and customs. The current version, Incoterms 2000, contains 13 terms and will probably not be revised before 2010.

In the banking sector, ICC has also standardised the practices for international letters of credit through its rules known as the Uniform Customs and Practice for Documentary Credits (UCP 500). The current version was released in 1993.

These are only two of the standardised trade practices developed by ICC, which are extensively used by international sellers and buyers. Further information can be found on ICC's web site" http://www.iccwbo.org

Model Contracts

Model contracts are growing in number and in use. They serve to standardise legal approaches across countries and cultures and answer frequently asked questions when drafting international business agreements.

In the 1950s, standard contracts were used mainly in the commodity sector, where they are part and parcel of daily practice. The Grain and Feed Trade Association, for example, proposes 80 different contracts, all drawn up by trade members, for the sale of wheat, rice, beans and other cereals.

In non-specialised areas, model contracts were scarce. However, hundreds of thousands of small and medium-sized enterprises (SMEs) were entering into international contracts, often without legal assistance. The need arose, therefore, to provide model contracts in an ever-widening circle of activities. Thus the ICC, again a pioneer in the field, proposed a Model Contract for the International Sale of Manufactured Goods, while ITC presented a Model Contract for the International Sale of Perishable Goods. The texts of over 150 model contracts are published by ITC on its Juris International web site: http://www.jurisint.org

Trade Treaties

A third set of common ground rules is found in trade treaties. Government and national trade promotion organisations need to know which are the most basic treaties that a country should ratify to encourage trade. These treaties set out the basics for international sales, arbitration, patents, trademarks, transport and other issues. Ratifying them sends a signal that the country is adopting an internationally recognised, safe legal context in which to conduct trade.

The UN treaty section alone contains over 40,000 treaties published in over 1,900 hard-copy volumes. The most important trade treaties signed in the last 50 years, however, number about 200. These can be found on Juris International web site.

Model Laws

Treaties are not very flexible. (A treaty is drafted through lengthy diplomatic conference meetings. It comes into force only when a certain number of countries have ratified it and it is not easily modified). To provide flexibility, the United Nations Commission or International Trade Low (UNCITRAL) has developed a groundbreaking process to harmonise trade laws through "model laws". UNCITRAL creates a model, and then governments simply incorporate that model into the laws of their respective countries. For example, in order to harmonise laws on arbitration, UNCITRAL developed a model law on international commercial arbitration that has been adopted by 45 countries on all continents.

Harmonising Regional Laws

Standardising and harmonising trade laws on a regional basis can stimulate intra-regional as well as other international trade.

The success story in this case is in Africa, a continent that is too often depicted simply as a recipient of foreign aid. Through its pioneer harmonisation of trade laws in 16 West African states, OHADA (Organisation for Harmonisation of Business Law in Africa) has set a pattern for several counties to follow: one business law, one company law, accountancy laws and one Supreme Court are used by a set of countries. Incidentally, this also means considerable economies of scale. And it works!

From Courts to Arbitration

Out-of-court settlement is also an enduring trend in modern business. Most countries are creating arbitration centres within their chambers of commerce for various pragmatic reasons, not the least of which is the impressive backlog of cases.

The Permanent Arbitration Court of the Croatian Chamber of Commerce has to face an enormous challenge, considering the number of cases before the Croatian courts; over 1.3 million court cases for a population of about 4 million. As Brendan Francis, an Irish author, said: "The best way to escape a problem is to solve it".

From Trials to Contracts

Nowadays many business lawyers never actually work in the courtroom, but instead focus on drafting contracts for businesses that aim to avert disputes before they occur. This change of direction can draw a parallel with changes in the mindset of quality controllers. Quality specialists like to recall a 1982 incident that made news throughout the United States: a nine-year old girl failed to find a toy in the popcorn package she had purchased. The maker of the popcorn explained that this was impossible since every package underwent three inspections to make sure it contained a surprise toy. Today, the emphasis has shifted from "inspection" to "prevention". The shift to prevention in the legal field also requires a change of attitude on the part of businesses. An investment in legal advice before a contract is ready to be signed may be more appropriate than "throwaway" expenses in a court dispute.