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THE CONFLICT OF LAWS IN THE CONTEXT OF THE CISG: A CHINESE PERSPECTIVE

Chen Weizuo

I. INTRODUCTION

The United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna on 11 April 1980 (hereinafter referred to as the “CISG”), became effective in the People’s Republic of China (“PRC”) on 1 January 1988, in relation to the other nine Contracting States.¹ To date, there are seventy-one Contracting States.² For twenty years the CISG has greatly influenced the Chinese legal system and legal culture. The Contract Law of the PRC (adopted and promulgated on 15 March 1999, entered into effect on 1 October 1999)³ was obviously inspired by the CISG.⁴ Chinese courts also have to apply the CISG directly to situations falling within the sphere of application of the CISG.⁵ Where Chinese judges directly apply the CISG to cases relating to contracts for the international

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¹ United Nations Convention on Contracts for the International Sale of Goods, April 11, 1980, 1489 U.N.T.S. 3, 19 I.L.M. 671, available at <http://cisgw3.law.pace.edu/cisg/biblio/dingding.html> [hereinafter *CISG*] (the countries included are: Argentina, Egypt, France, Hungary, Italy, Lesotho, Syrian Arab Republic, United States of America and Zambia).

² *Status:1980 – United Nations Conventions on the Contracts for the International Sale of Goods*, United Nations Commission on International Trade Law, http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html (last visited July 8, 2008).

³ This uniform Contract Law of the PRC replaced the former Economic Contract Law of the PRC, the former Foreign Economic Contract Law of the PRC and the former Law on Technology Contracts of the PRC.

⁴ See generally, Ding Ding, *China and CISG*, in *CISG AND CHINA: THEORY AND PRACTICE*, 25-37 (Michael R. Will, ed., 1999), available at <http://www.cisg.law.pace.edu/cisg/biblio/dingding.html> (last visited July 8, 2008); see *id.* at 26-36.

⁵ This is subject to the reservations declared by the PRC at the time of the deposit of its instrument of ratification.

sale of goods, there is no need to take into consideration choice of law rules. Yet, choice of law problems still arise despite the fact that the CISG seeks to unify substantive law in this area.⁶ This paper is a brief survey on the conflict of laws in the context of the CISG from a Chinese perspective that seeks to ascertain the governing law of contracts of sale of goods under Chinese choice of law rules.

This paper is limited to the choice of law problems that arise when the law governing contracts of sale of goods containing a foreign element is to be ascertained; problems such as international jurisdiction of Chinese courts and recognition and enforcement of foreign judgments in China will not be discussed. The paper is divided into five parts. Part I is a brief introduction. Part II is a comparison of the CISG definition of contracts for the international sale of goods with the concept of contracts of sale of goods containing a foreign element in Chinese Law. Part III explores situations where the CISG is applied or not applied. Part IV deals with the choice of law rules for contracts of sale of goods. Finally, a conclusion will be drawn in Part V based on the research of the present paper.

II. COMPARING THE CISG DEFINITION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WITH THE CONCEPT OF CONTRACT OF SALE OF GOODS CONTAINING A FOREIGN ELEMENT IN CHINESE LAW

1. *Definition of Contracts for the International Sale of Goods under the CISG*

What is a contract for the international sale of goods in the context of the CISG?

First, there must be a contract of sale of goods. However, six types of contracts of sale are excluded by Article 2 of the CISG, and contracts stipulated by Paragraph (2) of Article 3 of the CISG are excluded as well.

Second, the contract of sale of goods must be of international character, *i.e.* the places of business of the parties are in different States (Paragraph (1) of Article 1 of the CISG). How-

⁶ PETER NORTH & J. J. FAWCETT, *CHESHIRE AND NORTH'S PRIVATE INTERNATIONAL LAW* 603 (13th ed. 1999).

ever, if a party has more than one place of business, the official place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract; if a party does not have a place of business, reference is to be made to its habitual residence (Article 10 of the CISG). In determining whether the contract is of international character, neither the nationality of the parties, nor the civil or commercial character of the parties or of the contract, is to be taken into consideration (Paragraph (3) of Article 1 of the CISG).

2. *Concept of Contract of Sale of Goods Containing a Foreign Element under Chinese Law*

From the Chinese point of view, “contracts of sale of goods containing a foreign element” are somewhat different from “contracts for the international sale of goods” in the sense of the CISG. Under Chinese law, contract of sale of goods containing a foreign element is a contract of sale of goods which has at least one of the situations as follows: one of the parties to the contract is a foreign national or foreign legal person; one of the parties habitually resides abroad; one of the parties *de facto* resides abroad; one of the parties has its place of business abroad; the contract is concluded abroad; the contract is to be performed by one of the parties abroad; or the subject matter is a right in immovable property which is located abroad or a right to use immovable property which is located abroad. Both Paragraph (1) of Article 126 of the Contract Law of the PRC of 1999 and Article 145 of the General Principles of Civil Law of the PRC of 1986 speak of “*shewai heton*,” meaning contracts containing a foreign element. Yet, from the point of view of the conflict of laws (private international law), it is more important to ask whether it is a situation involving a choice between the legal systems of different countries.⁷

⁷ *Id.* at 544-45.

III. SITUATIONS WHERE THE CISG IS APPLICABLE OR NOT APPLICABLE

For Chinese courts with international jurisdiction, it is important to know whether a contract of sale of goods is a contract containing at least one foreign element. If it is a fully domestic contract, then the choice of law question does not arise; the law applicable to the contract is Chinese domestic law.

What law governs a contract of sale of goods containing a foreign element if China is the forum State?

1. *Situations Where the CISG Is Directly Applicable*

From the Chinese point of view, not every contract of sale of goods containing a foreign element shall be governed by the CISG. Only those falling into the sphere of application of the CISG (subject to the reservations declared by China) shall be governed by the CISG.

a) *The Sphere of Application of the CISG*

As to the sphere of application, Subparagraphs (1)(a) and (b) of Article 1 of the CISG provide expressly that the CISG “applies to contracts of sale of goods between parties whose places of business are in different States: (a) when the States are Contracting States; or (b) when the rules of private international law lead to the application of the law of a Contracting State.”⁸ In the situation of Subparagraph (1)(b) of Article 1 of the CISG, even when the places of business of either or both of the parties are in non-Contracting States, the Convention still becomes applicable if the rules of private international law (*i.e.* choice of law rules) lead to the application of the law of a Contracting State, and the forum state itself is a Contracting State. Here is an example of the applicability of the CISG under Subparagraph (1)(b) of Article 1: because the principle of party autonomy regarding the choice of law applicable to contracts belongs to “the rules of private international law”⁹ of all Contracting States of the CISG as well as non-Contracting States. In case the parties choose the law of a Contracting State as the governing law of the contract of sale of goods, it is logically not sur-

⁸ CISG, *supra* note 1, art. 1, paras. 1(a)-(b).

⁹ *Id.*

prising that if the places of business of the parties are in different States, and the places of business of either or both of the parties are in non-Contracting States, the CISG becomes applicable pursuant to Subparagraph (1)(b) of Article 1, even though it is not specifically mentioned.¹⁰

b) *The Reservation to Subparagraph (1)(b) of Article 1 Declared by China and Its Effects*

In accordance with Article 95 of the CISG, the People's Republic of China declared, at the time of the deposit of its instrument of ratification with the UN Secretary-General on 11 December 1986, that it did not consider itself bound by Subparagraph (1)(b) of Article 1 of the CISG.¹¹

As a result, situations where the CISG is directly applied by Chinese judges are relatively limited but certain; the CISG applies practically to contracts of sale of goods only if the parties have their places of business in different Contracting States. In other words, the decisive factor to apply the CISG is when the contract in question is a contract of sale of goods of international character in the sense of subparagraph (1)(a) of Article 1 of the CISG and when the application of the CISG is not specifically excluded by agreement in accordance with Article 6 of the CISG. From the perspective of Chinese courts faced with international situations involving contracts of sale of goods, the places of business of the parties must be in different Contracting States. The only criterion to judge the international character of a contract of sale of goods in the context of the CISG is the place of business of the parties to the contract, and it is not taken into consideration whether the parties are nationals or legal persons having the nationality of the same Contracting State (China or any of the other 70 Contracting States). This complies, at least in part, with Paragraph (3) of Article 1 of the CISG.

¹⁰ Isaak I. Dore, *Choice of Law Under the International Sales Convention: A U.S. Perspective*, 77 *AM. J. INT'L L.* 521, 529-31 (1983).

¹¹ Upon approving the CISG, the People's Republic of China declared that it did not consider itself bound by subparagraph (b) of paragraph (1) of article 1 and article 11, nor the provisions in the CISG relating to the content of article 11.

2. *Situations Where the CISG Is Not Directly Applicable*

a) *Due to the Reservation to Subparagraph (1)(b) of Article 1 of the CISG Declared by China*

If one party, regardless of nationality, has his place of business in China as the forum State or another Contracting State, and the other party has his place of business in a non-Contracting State, or if both parties have their places of business in two different non-Contracting States, the CISG is not applicable due to China's reservation to Subparagraph (1)(b) of Article 1 of the CISG.¹²

b) *Due to Paragraph (2) of Article 1 of the CISG*

Under Paragraph (2) of Article 1 of the CISG,¹³ in combination with Paragraph (1) of Article 1 of the CISG, the CISG is not applicable if it is not apparent from the contract, or from any dealings between the parties, or from information disclosed by the parties that the parties have their places of business in different States.¹⁴

c) *Excluded by Article 2 of the CISG*

The following six types of contracts of sale are excluded by Article 2 of the CISG from its sphere of application: contract of sale of goods bought for personal, family or household use (consumer sale); contract of sale by auction; contract of sale on execution or otherwise by authority of law; contract of sale of stocks, shares, investment securities, negotiable instruments or money; contract of sale of ships, vessels, hovercraft or aircraft; and contract of sale of electricity.¹⁵

¹² CISG, *supra* note 1, art. 1, para. 1(b); Pace Law CISG Database, CISG: Participating Countries – China (PRC), <http://cisgw3.law.pace.edu/cisg/countries/cntries-China.html> (last visited July 8, 2008).

¹³ CISG, *supra* note 1, art. 6, para. 2 (“The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.”). *Id.*

¹⁴ See Dore, *supra* note 10, at 533.

¹⁵ CISG, *supra* note 1, art. 2.

d) *Excluded by Paragraph (2) of Article 3 and Article 5 of the CISG*

Moreover, according to Paragraph (2) of Article 3 and Article 5 of the CISG, the Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists of the supply of labour or other services, nor does it apply to the liability of the seller for death or personal injury caused by the goods to any person.¹⁶

e) *Due to the Character of Ius Dispositivum of the CISG under Article 6*

Article 6 of the CISG provides that the parties may exclude the application of the CISG or derogate from or vary the effect of any of its provisions (subject to Article 12).¹⁷ The CISG is thus not applicable if the parties specifically exclude its application.

IV. CHINESE CHOICE OF LAW RULES ON CONTRACTS OF SALE OF GOODS CONTAINING A FOREIGN ELEMENT

We distinguish two situations as follows:

1. *The Situation Where the Applicable Law Is Chosen by the Parties*

a) *Principle of Party Autonomy in Modern Conflict of Laws*

In general, the parties shall be free to choose the governing law of international contracts under the doctrine of party autonomy because, in the private international law of all countries, it is generally recognized that the parties are free to choose the governing law of a contract. The principle of party autonomy provides the required certainty and predictability in civil and commercial matters. In principle, the parties may choose different legal systems for different parts of the contract. They are free to exercise their choice at any time and they are free to vary their choice. The choice of law by the parties can be an express

¹⁶ *Id.* at arts. 3, 5, para. 2.

¹⁷ *Id.* at art. 6.

choice or an inferred or implied choice.¹⁸ However, there are also restrictions on the parties' freedom to choose the governing law; for example, with regard to the problem of *ordre public* (public policy).

b) *The Chinese Rule on Party Autonomy*

Sentence 1 of Paragraph (1) of Article 126 of the Contract Law of the PRC of 1999 provides: "The parties to a contract containing a foreign element may choose the law applicable to the settlement of contractual disputes, except as otherwise stipulated by law."¹⁹ This provision is almost word for word identical to the formulation of Paragraph (1) of Article 145 of the General Principles of Civil Law of the PRC of 12 April 1986, which entered into force on 1 January 1987. Both recognize the principle of party autonomy as the primary choice of law rule in determining the applicable law of contract. This applies also to contracts of sale of goods.

Paragraph (1) of Article 10 of the Contract Law of the PRC of 1999 provides that the parties may conclude a contract in written, oral, or other forms. Theoretically, the choice of law by the parties to contracts of sale may also be in oral or other forms; a written choice of law is not necessary. But, in fact, Article 3 of the Rules of the Supreme People's Court on Several Questions Regarding the Application of Laws in the Trial of Cases of Contractual Disputes in Civil or Commercial Matters Containing a Foreign Element,²⁰ adopted on 11 June 2007 and entered into effect on 8 August 2007, provides that the choice or any change of the choice of the law applicable to contractual disputes by the parties shall be conducted in an express manner.²¹ This provision of the latest judicial interpretation aims to guarantee a certain degree of security of law.

¹⁸ John Humphrey Carlile Morris, *The Conflict of Laws* 341-43 (David McClean & Kisch Beevers, eds., 6th ed., 2005).

¹⁹ Contract Law of the People's Republic of China, http://www.novexc.com/contract_law_99.html (last visited July 8, 2008).

²⁰ 131 SUP. PEOPLE'S CT. GAZ. 6-7 (2007) (P.R.C.).

²¹ Rules of the Supreme People's Court on the Relevant Issues concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases in Civil and Commercial Matters (adopted by the Sup. People's Ct., Jun. 11, 2007, effective Aug. 8, 2007), art. 3, available at <http://www.law.infochina.com/law/display.asp?db=1&id=6300&keyword=Contractual,%20foreign> (P.R.C.).

2. *The Situation Where the Applicable Law Is Ascertained in the Absence of Choice*

a) *The Closest Connection Approach under Chinese Law*

In the absence of choice of law by the parties, the governing law of a contract of sale of goods shall be determined objectively under the Chinese rules on ascertaining the applicable law. Chinese judges shall select the decisive connecting factors by looking at the objective connections with a particular country.

The basic rule is that a contract shall be governed by the law of the country with which it is most closely connected. This rule applies in the situation where the governing law has not been chosen by the parties or where their choice has been ineffective. The governing law is then determined by looking objectively at the connections linking the contract to a particular country.

Sentence 2 of Article 126 of the Contract Law of the PRC of 1999 provides: "If the parties to a contract containing a foreign element have not made a choice [of the law applicable to the settlement of contractual disputes], the law of the country with which the contract is most closely connected shall be applied."²² This provision is practically a word-for-word copy of Paragraph (2) of Article 145 of the General Principles of Civil Law of the PRC of 1986.

Neither the Contract Law of the PRC nor the General Principles of Civil Law of the PRC has defined the meaning of "the settlement of contractual disputes."²³ This is a question relating to the scope of the applicable law of the contract, which needs to be clarified. According to the predominant opinion both in theory and in practice prior to 8 August 2007, "contractual disputes" ought to be widely comprehended. Those disputes of the parties on such questions as whether the contract has been established, the time of establishment, interpretation of contract, performance of contract, liabilities for breach of contract and disputes due to changing, suspending, transferring, rescinding and terminating of contract, shall all be included. This comprehensiveness in theory and practice originated from

²² Contract Law of the People's Republic of China, http://www.novexcn.com/contract_law_99.html (last visited July 8, 2008).

²³ *Id.*

a rule contained in Paragraph (1) of Article 2 of a judicial interpretation which has been abolished - "Answers by the Supreme People's Court to Several Questions Regarding the Application of the Foreign Economic Contract Law" issued on 19 October 1987.²⁴ But it should be noted that this judicial interpretation was abolished on 1 October 1999 with the entry into force of the uniform Contract Law replacing the former Foreign Economic Contract Law, the former Economic Contract Law and the former Law on Technology Contracts. Because the abolished Foreign Economic Law had a different scope of application than that of the unified Contract Law, the above-mentioned opinion could only be regarded as an opinion generally accepted by theorists and practitioners after 1 October 1999, but by no means a legally binding rule.

Now the ambiguity of the matter has been eliminated with the entry into force on 8 August 2007 of the Rules of the Supreme People's Court on Several Questions Regarding the Application of Laws in the Trial of Cases of Contractual Disputes in Civil or Commercial Matters Containing a Foreign Element, of which Article 2 provides: "For the purpose of the present rules, contractual disputes include those disputes such as disputes regarding the conclusion of contract, effects of contract, performance of contract, changes and transfers of contract, termination of contract as well as liabilities for breach of contract."²⁵

b) *Concretization of the Closest Connection Approach:
The Presumption of Characteristic Performance*

aa) *Rules Contained in the Abolished Judicial
Interpretation Prior to 8 August 2007*

Officially, Chinese statutory rules do not use any presumption relating to characteristic performance. But Paragraph (6) of Article 2 of the abolished judicial interpretation issued on 19 October 1987 ("Answers by the Supreme People's Court to Several Questions Regarding the Application of the Foreign Economic Contract Law") provides: "As to foreign economic contract, if the parties have not chosen the law applicable to the

²⁴ SUP. PEOPLE'S CT. GAZ. 3-7 (1987) (P.R.C.).

²⁵ SUP. PEOPLE'S CT. GAZ. 6-7 (2007) (P.R.C.).

contract, Chinese courts shall determine the applicable law in accordance with the principle of the closest connection.”²⁶ This abolished judicial interpretation gave examples of thirteen types of contracts, of which the contract for the international sale of goods was the first type listed.

Concretely speaking, a contract for the international sale of goods, which has not been clearly defined under Chinese statutory law, should be governed by the law of the place of business of the seller at the time of the conclusion of the contract. Yet, the law of the place of business of the buyer at the time of the conclusion of the contract should be applied if the contract was negotiated and concluded at the place of business of the buyer, or if the contract expressly provided that the seller had to perform his obligation of delivery at the place of business of the buyer. Nevertheless, this presumption of characteristic performance is refutable: if the contract manifestly had a closer relationship with another country, the Chinese courts should settle the contractual disputes based on the law of that other country.²⁷

In this situation, the closest connection approach rectifies the presumption of characteristic performance. Yet, it is important to point out that the former Foreign Economic Law applied only to those economic contracts concluded by Chinese enterprises or other economic organizations (Chinese nationals were excluded!) with foreign enterprises or other economic organizations or individuals. This abolished law reflected the Chinese planned economy of 1980s, and its scope of application was too narrow compared with the unified Contract Law which has been in effect since 1 October 1999. It was not reasonable, though understandable, that the corresponding judicial interpretation used the place of business as a connecting factor instead of the habitual residence of the party who was to affect the characteristic performance. The draftsman of this abolished judicial interpretation seemed not to have consulted many examples of legislative provisions of other countries on the doctrine of characteristic performance.

²⁶ SUP. PEOPLE'S CT. GAZ. 3-7 (1987) (P.R.C.).

²⁷ *Id.* at 4-5.

bb) Rules Contained in the New Judicial Interpretation Since 8 August 2007

The Rules of the Supreme People's Court on Several Questions Regarding the Application of Laws in the Trial of Cases of Contractual Disputes in Civil or Commercial Matters Containing a Foreign Element, which came into force on 8 August 2007, contain new provisions on characteristic performance. Paragraph (2) of Article 5 of this judicial interpretation provides:

When determining the law applicable to contractual disputes in accordance with the principle of the closest connection, the people's courts shall, in the light of such factors as the specific nature of the contract and the obligation to be performed by one party which may best embody the essential specific characteristic of the contract, determine the governing law of the contract which is the law of the country or region with which the contract has the closest connection.²⁸

The judicial interpretation lists seventeen types of contracts, of which the contract of sale is the first listed. They relate to presumptions of characteristic performance for various contract types. On the basis of such presumptions, a contract of sale is governed by the *lex domicilii* of the seller at the time of conclusion of the contract; but if the contract was negotiated and concluded at the domicile of the buyer, or if the contract expressly provides that the seller must perform his obligation of delivery at the domicile of the buyer, then the *lex domicilii* of the buyer is applicable. Nevertheless, this presumption of characteristic performance is refutable: if the contract of sale manifestly has a closer relationship with another country or region, the law of that other country or region shall be applied (Paragraph (3) of Article 5 of the above-mentioned judicial interpretation of 2007).²⁹ Here, the closest connection approach rectifies the presumptions of characteristic performance provided by the new judicial interpretation of 2007. Compared with the former judicial interpretation issued in 1987 (abolished on 1 October 1999), the new rules contained in the judicial interpretation of 2007 may be deemed an improvement.

²⁸ 131 SUP. PEOPLE'S CT. GAZ. 6-7 (2007) (P.R.C.).

²⁹ 131 SUP. PEOPLE'S CT. GAZ. 7 (2007) (P.R.C.).

3. *Exclusion of Renvoi*

One question arises as to whether *renvoi* (remission or transmission) is to be considered in determining the legal system applicable to contracts of sale of goods containing a foreign element. Both doctrines and practices on Chinese contract choice of law rules give a negative answer. According to Article 1 of the above-mentioned judicial interpretation of 2007, the law applicable to civil or commercial contracts containing a foreign element, whether chosen by the parties or not, refers to the substantive law of a relevant country or region other than its conflicts law and procedural law. Hence, there is no room for the doctrine of *renvoi* (remission or transmission).³⁰ This also follows the trend of contemporary private international law.

4. *Ordre Public*

The choice and determination of the applicable law of the contract, in accordance with the closest connection test, is subject to restriction as to *ordre public* in Chinese private international law.³¹ In the case where the applicable law is a foreign law, if the application of the foreign law is incompatible with the fundamental principles of Chinese law and social and public interests of China, then its application shall be excluded in favor of Chinese law.

5. *Evasion of Law*

Finally, any act of evasion of the mandatory rules of Chinese laws and administrative regulations conducted by the parties will lead to the exclusion of the foreign law which would otherwise govern under Chinese choice of law rules. In these

³⁰ See e.g., the Rome Convention on the Law Applicable to Contractual Obligations, June 19, 1980, 1980 O.J. (L 266) 1, art. 15.

³¹ General Principles of Civil Law of the PRC of 1986, art. 50 (promulgated by Order No. 37 of the President of the People's Republic of China, April 12, 1986, effective Jan. 1, 1987), available at http://www.chinaproject.de/Recht_Steuern/General%20Principles%20of%20the%20Civil%20Law%20of%20the%20People's%20Republic%20of%20China.htm. The Rules of the Supreme People's Court on Several Questions Regarding the Application of Laws in the Trial of Cases of Contractual Disputes in Civil or Commercial Matters Containing a Foreign Element, art. 5 (adopted by the Sup. People's Ct., June 11, 2007, effective Aug. 8, 2007), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/JudicialInterpretation/t2007090583327.jsp.

circumstances, contractual disputes shall be governed by Chinese law despite the parties' choice of a foreign law to govern the contract.³²

V. CONCLUSION

For contracts of sale of goods containing a foreign element, Chinese courts, as courts of the forum State, first have to examine whether the CISG shall be directly applied because the application of the CISG automatically excludes Chinese choice of law rules.

On the one hand, the application of the CISG by Chinese judges depends on whether it is a situation falling within the sphere of application of the CISG. Due to the reservation to Subparagraph (1)(b) of Article 1 of the CISG declared by China, the sphere of application of the CISG is relatively clear from the Chinese point of view.³³ But the price for this clarity might be the reduction of application of the CISG in China as one of the Contracting States. On the other hand, the precondition to apply Chinese choice of law rules to a contract of sale of goods involving a choice of laws of different countries is that the situation does not fall into the sphere of application of the CISG. The principles of party autonomy and of closest connection are two pillars in determining the law applicable to contracts of sale of goods. When referring to foreign laws from Chinese choice of law rules in the area of contractual obligations, *renvoi* (remission or transmission) is always excluded. *Ordre public* and evasion of law could be causes of restricting the application of foreign laws. To some extent, the Chinese choice of law rules in this area reflect the trends in contemporary private international law, though there are still some deficiencies in Chinese statutory provisions on the conflict of laws.

³² See North & Fawcett, *supra* note 6, at 132.

³³ See CISG, *supra* note 1, art. 1.