I. CISG Background.

A. CISG is an International Commercial Legal Code Governing Sales of Goods.

The United Nations Convention on Contracts for the International Sale of Goods ("CISG" or "Convention") is a multilateral treaty that governs the rights and obligations of parties to international sales contracts. The CISG is designed to foster international trade by making it easier and more economical to buy and sell raw materials, commodities and manufactured goods in transnational commerce through a unified legal approach. The Convention is an international commercial legal code. According to a leading CISG scholar, the jobs of the Uniform Commercial Code ("UCC") and the CISG "are substantially the same. Both were designed to reduce the misunderstandings and controversies that can arise when one law governs the seller and a different law the buyer. They do the job in different areas: The UCC is designed to avoid the modest differences among the domestic laws of our fifty states, while the CISG is designed to overcome differences among the laws of the countries of the world". J. Honnold, "The Sales Convention: From Idea to Practice", 17 J. Law and Commerce 181 (1998).

B. History of CISG.

The CISG is an extraordinary and extremely notable example of international legal cooperation. Its origins may be traced to the early 1930's when scholars, lawyers and traders began to explore the possibility of creating a uniform law to govern international trade. Interrupted at various intervals by world events, these efforts continued over several decades under the auspices of the International Institute for the Unification of Private Law and the United Nations Commission on International Trade Law. The drafting and negotiation of the ultimate Convention was quite inclusive. Over 62 nations representing quite different legal systems (common law, civil law and other types of legal systems) participated in the process and provided their input. Academics, corporations, traders, diplomats and lawyers all played a role. The Convention was finalized at a diplomatic conference in Vienna in 1980 (thus, the CISG is sometimes referred to as the "Vienna Sales Convention"). The CISG is officially plurilingual in 6 different languages: Arabic; Chinese; English; French; Russian; and Spanish.

C. CISG Contracting States.

Nineteen nations signed the Convention in 1980 and 1981, including the United States. All but two of the original signatory countries subsequently ratified the CISG. The Convention "entered into force the following 11 nations: Argentina; the People’s Republic of China; Egypt; France; Hungary; Italy; Lesotho; Syrian Arab Republic; United States; Yugoslavia; and Zambia.

Subsequently, the Convention has achieved relatively wide-spread acceptance. As of October 2000, 57 countries (including the United States) have signed and ratified the CISG. Two additional nations signed the CISG but have not yet ratified the Convention. The CISG is in force with respect to most (but not all) of the United States’ principal trading partners and is estimated to presumptively cover approximately two-thirds of goods moving in international commerce.

Regionally, the CISG has been universally adopted in North America (ie. United States, Canada and Mexico). The Convention regime has achieved acceptance in most of Western and Eastern Europe. The United Kingdom and Ireland are notable European exceptions and have not ratified the CISG. Latin America is split. Although Argentina, Chile, Ecuador and Peru have ratified the treaty, Brazil and Columbia have not. The CISG is in effect in only five African nations. Similarly, the Convention has not achieved general acceptance in Asia. Only two Asian countries have ratified the CISG: the People’s Republic of China (including Hong Kong) and Singapore.

The current list of countries which have ratified the CISG is published and updated by the International Trade Law Branch of the United Nations Office of Legal Affairs Servicing the United Nations Commission on International Trad Law and is available on the Internet (www.uncitral.org).

With respect to Colorado, approximately two-thirds of Colorado's principal export and import trade partners (as identified by the Colorado International Trade Office and the World Trade Center) have ratified the Convention. The following table shows Colorado's
trade partners (roughly by volume of trade) and identifies their position with respect to the Convention.

<table>
<thead>
<tr>
<th>Principal Colorado Trade Partners (WTC and CITO)</th>
<th>CISG Contracting State? (10 of 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Canada</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Japan</td>
<td>No</td>
</tr>
<tr>
<td>3. Germany</td>
<td>Yes</td>
</tr>
<tr>
<td>4. United Kingdom</td>
<td>No</td>
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<tr>
<td>5. France</td>
<td>Yes</td>
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<tr>
<td>6. Korea</td>
<td>No</td>
</tr>
<tr>
<td>7. Mexico</td>
<td>Yes</td>
</tr>
<tr>
<td>8. Netherlands</td>
<td>Yes</td>
</tr>
<tr>
<td>9. Singapore</td>
<td>Yes</td>
</tr>
<tr>
<td>10. Hong Kong</td>
<td>Yes</td>
</tr>
<tr>
<td>11. Ireland</td>
<td>No</td>
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<tr>
<td>12. Taiwan</td>
<td>No</td>
</tr>
<tr>
<td>13. Australia</td>
<td>Yes</td>
</tr>
<tr>
<td>14. China (PRC)</td>
<td>Yes</td>
</tr>
<tr>
<td>15. Switzerland</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The Convention permits Contracting States to make certain “reservations” at their election. The reservations are deviations from the standard provisions of the CISG. For example, at least nine nations (mostly in Eastern Europe and Latin America; but not including the United States) have declared that any provisions which would permit contracts other than in writing (ie. oral contracts) would not apply in those nations. The United States and several other countries made a “reservation” stating that they will not be bound by a technical CISG provision that makes the Convention applicable under a choice-of-law analysis even if one or both parties to the contract do not have a place of business in a Contracting State.

II. General Scope of CISG.

The Convention is generally effective with respect to “contracts for the sale of goods between parties whose places of business are in different Contracting States. CISG Article I(1) (emphasis added).

The CISG does not apply to sales: (1) of consumer goods (ie. bought for personal use and consumption by the purchaser); (2) by auction; (3) of securities or negotiable instruments; (4) of ships, vessels or aircraft; or (5) electricity. CISG Article 2. The Convention also is not applicable if the party that orders the goods undertakes to supply a “substantial part” of the materials necessary for the manufacturer of the goods. CISG Article 3(1). Further, the CISG does not purport to govern potential personal injuries caused by goods. CISG Article 5.

By using the term “goods”, the CISG (like the UCC) makes a distinction between the sale of “goods” and the sale of “services.” The Convention does not apply to contracts in which the “preponderant part of the obligations...consists in the supply of labour or other services.” CISG Article 3(2). Thus, most agreements solely for distribution, licensing, leasing, transportaion, carriage, insurance and financing are likely not covered by the Convention. Transactions which involve the sale of computer software or both the sale of goods and services or “gray areas” (ie. leases with purchase options) may raise potentially difficult legal issues concerning the applicability of the Convention.

III. Freedom of Contract Under CISG.

Many CISG commentators have argued that the most fundamental provision of the Convention is the “freedom of contracts” principle. CISG Article 6 permits the parties to “derogate from or vary the effect of any of its [CISG] provisions.” Thus, the ICSG does not deprive buyers and sellers from the freedom to mold their contracts the their own needs and to modify the presumptive CISG provisions. Instead, the Convention is primarily designed to provide dependable solutions for things not specifically considered by the parties (ie. “gap-filling” or “default setting”). The CISG provisions should always yield to specific contrary contract terms.

IV. Automatic Application of CISG and Opting Out of CISG.

Although not widely known within the international trade and legal communities, as a general matter, the Convention presumptively
and automatically governs all international trade transactions within the CISG’s scope (ie. a contract for the sale of goods with a party in another Contracting State).

However, the CISG permits the ultimate freedom to contract deviation: complete exclusion of the Convention. Under CISG Article 6, "the parties may exclude the application of this Convention...." Parties desiring to entirely exclude application of the CISG (presumably after completing a careful analysis of the comparative benefits and detriments in the specific transaction) must be extremely cautious in fashioning the exclusion provision.

For example, a simple (but very common) domestic choice of law provision such as the following likely will not effect an exclusion of the Convention as governing law:

The rights and obligations of the parties under this contract shall be governed by and construed under the laws of the State of Colorado.

Even though the parties to such a contract specifically identified the "laws of the State of Colorado," international treaties such as the CISG are the supreme law of the United States and, therefore, may be construed as part of the law of the State of Colorado.

If the parties desire to exclude application of the Convention, such exclusion should be explicit and state the alternative applicable law. For example, the following provision should effect an exclusion of the CISG:

The rights and obligations of the parties under this contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Instead, the rights and obligations of the parties under this contract shall be governed by the laws of the State of Colorado, including the Colorado Uniform Commercial Code.

V. CISG Is Neglected in United States.

Most traders and lawyers, especially those who do not routinely conduct international transactions, are unaware of, or at least unfamiliar with, the CISG. When the Convention was finalized 20 years ago, legal scholars predicted that it would be widely endorsed by the international commercial community and rapidly become a world commercial law largely supplanting domestic law (such as the UCC) which was not specifically tailored to international transactions.

The optimism and promise of the early years has eroded. "We now face the reality that it [CISG] suffers from neglect, as well as ignorance and even fear." J. Murray, “The Neglect of CISG: A Workable Solution,” 17 J. Law and Commerce 365 (1998). Although the CISG is no longer new, it is still largely an unproven commodity, especially in the United States.

One measure of the CISG’s use and influence in the United States is court adjudications. Two years ago, an appellate court noted that "[d]espite the CISG's broad scope, surprisingly few cases have applied the Convention in the United States." MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino, S.p.A., 114 F.3d 1384, 1389 (11th Cir. 1998). That may be an understatement. Another court's observation is probably more accurate: "There is virtually no case law under the Convention." Delchi Carrier S.p.A. v. Rotorex Corp., 71 F.3d 1024, 1027-28 (2nd Cir. 1995).

As of October 2000 a computerized search of United States legal databases established: (1) there are no reported legal decisions concerning the CISG ever issued by a Colorado State Court (ie. District Court for the City and County of Denver and Colorado Supreme Court); (2) there are no reported legal decisions concerning the CISG ever issued by a Colorado Federal Court (ie. the United States District Court for the District of Colorado); (3) there are no reported legal decisions concerning the CISG ever issued by the United States Court of Appeals for the Tenth Circuit (which encompasses Colorado); and (4) there are no reported legal decisions concerning the CISG ever issued by the United States Supreme Court. Nationwide, only two State Courts have ever even mentioned the Convention. Nationwide, only 20 reported decisions from the Federal Courts refer to the CISG. In more than half of those cases, the Federal Courts simply mentioned the CISG in passing as not applicable.

The final result is that after more than a decade only a handful (literally) of court decisions nationwide have construed the Convention. In comparison, during just the first 10 months of the year 2000, the United States domestic sales law was adjudicated in reported decisions from at least 300 Federal Courts and 300 State Courts, including many in Colorado.

These statistics may be criticized somewhat as underestimating the use of the CISG since approximately 80% to 90% of international commercial transactions contain mandatory alternative dispute resolution provisions for mediation, conciliation and/or arbitration. As a result, many CISG disputes may never make it to court. Many arbitration proceedings are informal, private and confidential.

Even recognizing the significant place of arbitration in transnational commerce, the United States still lags well-behind in CISG use and adjudication. For example, as of 1998, a world-wide CISG database reported 250 adjudicated CISG decisions (including some arbitrations) around the world in the 10 years from 1988 to 1998. Of these, more than 100 were in Germany. An additional 100 were equally split between Switzerland, France and the Netherlands. In the entire rest of the world (including the United States) there were only about 50 additional CISG cases.
Although every passing years witnesses more CISG cases, the Convention is clearly not yet a seasoned and tested, veteran commercial statutory scheme like the UCC. It may be that parties in many (or even most) international transactions are choosing to "opt-out" of the Convention. Regardless of the reasons, at least in Colorado, every CISG case will be a case of first impression.

VI. Substantive Comparison of CISG and UCC.

At the risk of gross over-generalization, the CISG can probably be accurately characterized as "generally consistent" with the UCC. Most scholars, lawyers and traders have agreed that the CISG is well-drafted, fair, balanced and generally reflects international business expectations and norms. Obviously, as with any multi-lateral negotiation, the Convention ultimately represents a series of compromises.

The balance of this Section identifies and analyzes some of the most important differences between the CISG and the UCC. (There are other differences between the CISG and UCC which are not described in this Outline. With respect to any particular international transaction, competent legal advice should be obtained to assist in comparing the relative differences between the CISG and UCC.)

A. Statute of Frauds or Oral Contract.

One of the most significant differences between the Convention and the UCC concerns the "Statute of frauds" or oral contracts. With respect to the domestic sale of goods, the UCC "statute of frauds" generally provides that "contract for the sale of goods for a price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought..." C.R.S. § 4-2-201. Furthermore, any amendment or modification to a contract must also be in writing if the underlying contract is required to be in writing. C.R.S. § 4-2-209(3).

The UCC approach has historical roots going back several centuries to English law. The "no oral contracts" law represents a policy decision designed to avoid the misunderstandings and differing recollections which are often inherent in oral transactions. Advocates argue that by requiring the parties to reduce their agreement to writing, the terms of the agreement are more accurate and definite and less prone to subsequent dispute. In actual practice, there are many exceptions to the "statute of frauds." As a result, while the UCC establishes a clear presumption against the enforcement of oral contracts, such oral contracts may be enforced in certain circumstances (ie. reasonable reliance and performance).

The Convention departs from the UCC formal requirement of a written agreement. CISG Article 11 states: "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proven by any means, including witnesses." Furthermore, the Convention generally permit oral amendments or modifications to contracts. CISG Article 29.

The oral contract issue was quite divisive in the negotiations for the CISG. The United States and certain other common-law nations pressed for a written agreement requirement. On the other hand, many countries in the civil law tradition had no such requirement and advocated the recognition of oral contracts. In the end, the CISG followed the more liberal civil law approach in enforcing oral agreements. Notably, however, several nations (mostly in Eastern Europe and Latin America; but not the United States) have made "reservations" concerning oral contracts and continue to insist that international contracts for the sale of goods must be in writing.

The "statute of frauds" differences between the UCC and the CISG are also related to another potential area of difference between the traditional UCC approach and the CISG: the "parol evidence" rule. In the United States, generally, oral testimony of witnesses concerning the terms of a contract and intent of the parties which contradict or varies from the terms of a written contract is inadmissible in evidence. The CISG does not expressly address this issue. However, given the CISG's willingness to endorse oral contracts, some courts and most commentators believe that the CISG abandons the rule in favor of a more liberal approach permitting testimony even if it contradicts or varies from the terms of a written contract. The few United States Courts that have considered the issue reached opposite results concerning whether the "parol evidence" rule is applicable to CISG disputes. MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino, S.p.A., 114 F.3d 1384, 1389 (11th Cir. 1998) (parol evidence rule does not apply in CISG action); Beijing Metals & Minerals Import/Export Corp. v. American Business Center, Inc., 993 F.2d 1178, 1183, n. 9 (5th Cir. 1993)(parol evidence rule does apply in CISG action).

B. Battle of the Forms.

The Convention and the UCC differ in their approaches to the "battle of the forms." The typical "battle of the forms" (there are many variants) occurs when a buyer sends a seller a purchase order that includes numerous terms and conditions (usually in small print, legalese on the back side of the form) that the buyer desires to include in the contract. The seller sends back an acknowledgment that adds a different series of terms and conditions to the buyer's original purchase order. These forms (the purchase order and acknowledgment) usually conflict because each party (through its lawyer) has developed form terms that are most favorable for that party. While the front sides of the various forms may agree (on important terms such as price, transportation and quantity), the backs sides are in confusing disarray (ie. a battle of the forms).

Before the advent of the UCC, most American (and English common law) jurisdictions had generally followed a "last shot doctrine" or "mirror image rule." If the terms of the acknowledgment varied from the terms of the purchase order, the varied acknowledgment became not an acceptance but a counter-offer. So long as the parties did not actually perform, no contract would be formed and
either party could "get out" of the arrangement. Normally, however, even in spite of the conflicting forms, the seller would deliver and they buyer would receive the goods. When the transaction was thus completed by performance, the common-law assumed that a contract had been formed. Subject to many exceptions, generally the terms of the contract consisted of the terms of the original offer subject to the modifications contained in the acceptance.

The UCC changed the common-law "mirror image rule." C.R.S. § 4-2-207 creates a default provision whereby a finaly form that is not intended specifically as a counter-offer will act as an acceptance even though it contains different or additional terms to those contained in the prior form. The additional terms are considered as proposals for additions to the contract and as between merchants become part of the contract unless: (1) the offer expressly limits acceptance to the terms of the offer; (2) the terms materially alter the offer; or (3) notification of objection to the terms has already been given or is given within a reasonable time after notice has been received. The normal result under the UCC is to reverse the common-law presumption that the last form governs and replace it with the result that the second to last form usually governs.

Consider the following example. A Chinese company sends a purchase order to a Colorado company offering to purchase 10,000 cowboy hats for US $1 million. On the back of the purchase order, it is stated that all disputes shall be resolved in Shanghai in the Chinese language under Chinese law. The Colorado company responds by sending its acknowledgment sales order to the Chinese company. In many respects (ie. price and quantity) the acknowledgment sales order and the purchase order are the same; however, on the back side of the acknowledgment sales order, the Colorado company has included a provision requiring that all disputes shall be resolved in Denver in the English language under Colorado law. No further forms, communications or objections are exchanged. A few weeks later, the Colorado company ships the cowboy hats to China.

Under the common-law "mirror image" approach, no contract would have been concluded prior to performance (since the purchase order and acknowledgment sales order were materially different with respect to dispute resolution). However, after the cowboy hats were sent to China and received, a contract would exist. The terms of the contract would likely follow the Colorado company's acknowledgment sales order form (ie. the "last shot") and dispute resolution would be in Denver in English under Colorado law since the Chinese company assented to the last shot by accepting the cowboy hats.

Under the UCC approach, a contract would have been concluded earlier ie. when the Colorado company delivered its acknowledgment sales order. The terms of the contract would likely follow the Chinese company's purchase order since the Colorado company's acknowledgment sales order materially altered the offer. Thus, dispute resolution would be in Denver in English under Colorado law since the Chinese company assented to the last shot by accepting the cowboy hats.

The CISG departs from the UCC approach and instead is consistent with the old common-law "mirror image" rule. CISG Article 19(1) states: "A reply to an offer which purports to be an acceptance but contains [material] additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer."

C. Warranties and Disclaimers of Warranties.

The UCC and the Convention have similar provisions for warranties but differ with respect to disclaimers of warranties. Under the Convention, the seller has a four-fold warranty obligation and "must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract." CISG Article 35(1). Goods do not conform with the contract unless they "are fit for the purposes for which the goods of the same description would ordinarily be used" and "are fit for any particular purpose expressly or impliedly made known to the seller...." CISG Article 35(2)(a) and (b).

However, the CISG does not contain any provisions comparable to the disclaimer procedures that sellers are authorized to use under the UCC. For example, under the UCC, an effective disclaimer of the implied warranty of merchantability must mention "merchantability" and must be in conspicuous writing. C.R.S. § 4-2-316(2). Similarly, an effective disclaimer of an implied warranty of fitness must be in writing and conspicuous. The UCC proposes language such as: "There are no warranties which extend beyond the description on the face hereof." C.R.S. § 4-2-316(2). The Convention is less formalistic and appears to permit disclaimers of warranties so long as the "parties have agreed" in writing or orally. CISG Article 35(2).

D. Perfect Tender Rule.

Under the UCC, a buyer is generally entitled to reject goods under a one-delivery contract of sale that fails in any respect to conform to the contract. C.R.S. § 4-2-601. This is known as the "perfect tender" rule. Under it a buyer may generally (subject to good faith and certain other requirements) reject goods and cancel the contract even if a defect in tendered goods is not serious and the buyer would have received substantially the goods for which it bargained.

The CISG departs from the "perfect tender" rule and makes rejection, revocation of acceptance or cancellation much more difficult. Under the Convention's provisions, a buyer may "declare the contract avoided" only if the failure by the seller to deliver goods constitutes "a fundamental breach" of the contract. CISG Articles 49(1) and 64. A breach of contract is "fundamental" only "if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract" and even then, only if the seller foresaw, or a reasonable party in the seller's position would have foreseen, such a result. CISG Article 25.
E. Notice of Non-Conforming Goods.

The CISG provides that "the buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or should have discovered it." CISG Article 39(1). The buyer bears the burden to establish that notice of non-conformity was given within a "reasonable" time frame. Whether notice was given within a "reasonable" time depends upon the facts and circumstances of the transaction, including the type of goods (for example, notices concerning perishable goods should be given more promptly).

Although the analogous UCC provision (C.R.S. § 4-2-607(3)(a)) also requires notice within a "reasonable time", the CISG approach has been construed far more narrowly and restrictively than the UCC in other nations. Under the UCC, the buyer is afforded "a reasonable opportunity to inspect the goods." C.R.S. § 4-2-606(1)(a). However, under the CISG, the buyer must inspect the goods "within as short a period as is practicable under the circumstances." CISG Article 38(1). Based on these differences, the "reasonable" time periods for notices of non-conformity have been construed abroad as quite short. Further, the specificity mandated by the CISG appears more restrictive than under the UCC (especially so in German decisions). As a result, effective notice of non-conformity under the UCC should be very detailed.

F. Unilateral Price Reduction.

The CISG contains many of the same damages remedies as available under the UCC. Generally, a buyer may claim damages if the seller fails to perform. Such damages consist of a sum equal to the loss, including the loss of profit, suffered as a consequence of the breach. CISG Articles 74-77. These provisions resemble the direct, incidental and consequential damages under the UCC. C.R.S. §§ 4-2-714 and 4-2-715.

However, the CISG includes a novel unilateral price reduction remedy. CISG Article 50. Under that section, "[i]f the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that the conforming goods would have had at that time." This pro-purchaser, self-help remedy stems from civil law and has generally not been available in common law jurisdictions such as the United States and England. It is not available if the seller is able to cure non-conformity without causing unreasonable delay or inconvenience to the buyer.

G. Trade Terms.

The UCC contains some definitions of common trade terms such as F.O.B., F.A.S., C.I.F., and C.I.F. C.R.S. §§4-2-319 to 4-2-322. The CISG does not contain any provisions concerning trade terms. The parties may develop their own trade terms to specify the obligations of the parties. However, in the international context (giving varying meanings and nuances), the parties may best achieve clarity by incorporating trade terms from commonly-accepted trade term regimes such as the International Chamber of Commerce Official Rules for the Interpretation of Trade Terms (Incoterms)(2000). The Incoterms have recently been revised and the most current version became effective on January 1, 2000. Information about the Incoterms is available on the Internet (www.iccwbo.org).

H. Other Differences.

There are numerous other differences between the UCC and the CISG which are not identified in this outline. Traders should review the CISG and consult with legal professionals concerning any specific issues involving comparison of the CISG and UCC.

VII. Statute of Limitations Under CISG.

The CISG does not contain a general statute of limitations provision requiring that dispute resolution be initiated within a certain time frame. However, a separate treaty governs the issue: the United Nations Convention on the Limitation Period in the International Sale of Goods. That convention was originally completed in 1974 but was amended in 1980 through a Protocol to make it consistent with the CISG (together, the "Limitations Convention"). The key limitations period under the Limitations Convention is four years after the claim accrues (i.e. usually the date of breach of the contract). The statute of limitations is longer than the three year period of limitations generally applicable under the Colorado UCC. C.R.S. §§ 4-2-725 and 19-80-101. Fewer nations have ratified the Limitations Convention than have ratified the CISG. As of October 2000, at least some version of the Limitations Convention (i.e. 1974 version or 1980 Protocol) had been ratified in 24 nations, including the United States (as compared to 57 countries that have ratified the CISG). Accordingly, if a CISG-governed transaction is conducted with a non-signatory of the Limitations Convention, the applicable statute of limitations may be uncertain.

VIII. Practical CISG Issues for Purchasers.

A. CISG Advantages and Disadvantages.

The CISG is a complex code for international trade law that may have advantages and/or disadvantages for the United States purchaser depending upon the unique international transaction being considered and the special facts and circumstances of each case. However, scholars and commentators have identified the following as very general advantages and disadvantages:
1. Advantages.

- The CISG reflects international business expectations.
- The CISG is fair and does not appear overall to favor buyers at the expense of sellers or vice-versa.
- The CISG is "good law" in that it represents reasonable compromises on difficult commercial issues acceptable to most of the important participants in international trade.
- The CISG is reasonably well-drafted.
- The CISG is generally similar to the UCC on most issues.
- The CISG promotes uniformity.
- The CISG may make international transactions easier for "heavy volume" traders who trade with numerous different foreign countries since the domestic sales laws of such other foreign countries are less important if the CISG governs.

2. Disadvantages.

- After 12 years, the CISG is still an unproven commodity.
- United States traders are unfamiliar with the CISG.
- Lawyers (for United States traders) are unfamiliar with the CISG.
- Courts are unfamiliar with the CISG.
- The CISG is untested (through legal proceedings) on most issues.
- The UCC is more familiar to United States traders, lawyers and courts and may better reflect the expectations of the United States business community.
- The unfamiliarity of traders, lawyers and courts with the CISG may raise transactional costs and the costs of dispute adjudication.

B. Specific Practical Issues.

Each international transaction is different. The parties should carefully analyze whether the CISG applies, or should be excluded, based upon the unique factors, facts and circumstances of the trade. However, United States purchasers may wish to consider the following practical issues:

- Consider opting out of the automatic application of the CISG and instead specifying the law of Colorado, including the UCC, as the applicable law for the transaction. Most purchasers and lawyers are unfamiliar with the CISG. It has not been thoroughly tested in the United States. To the extent that the purchaser has superior bargaining power, there would appear to be very little "downside" in initially requesting that the transaction exclude the CISG. Such opt-out must be carefully drafted and must specify the CISG as being excluded and also identify the chose applicable law. Many major United States companies have default to such a position. Opting out avoids the discomfort of the unknown.

- If the CISG will govern, consider negotiating and executing a very detailed contract will will govern all foreseeable issues and contingencies. The CISG permits freedom of contract so that the specific terms of the contract will generally "trump" the CISG. The CISG primarily is "gap-filling". Accordingly, the better the contract for the purchaser, the better the result for the purchaser under the CISG.

- If the CISG will apply, recognize the absence of the "statute of frauds." Consider formalizing all matters with the foreign party in writing and including contractual "statute of frauds" provisions, merger and integration clauses and other means of ensuring that oral contracts or modifications will not be enforced. In the very early stages, even before the written contract, consider announcing that oral statements are not binding and only the final written agreement will govern and try to obtain acknowledgment from the foreign party.

- If the CISG will apply, recognize the "battle of the forms" issues. Consider requiring a single written agreement signed by both parties rather than an exchange of different and contradictory forms. If the parties signa clear agreement with all the "boiler-plate"
addressed, then the "battle of the forms" will not materialize. If that is not possible, carefully review the various forms exchanged and timely object to unacceptable provisions in the foreign seller's forms. Try to make the "last shot" before delivery of the goods.

- If the CISG will apply, recognize that the foreign seller may disclaim warranties without following the formal requirements of the UCC. Consider and try to reach agreement with the foreign party on the specific warranties and disclaimers rather than through an exchange of different and contradictory forms.

- If the CISG will apply, recognize that the "perfect tender" rule will not. Consider incorporating the "perfect tender" rule into the contract and specifically addressing the issue raised by non-conforming goods.

- If the CISG will apply, recognize the potential remedy of a "unilateral price reduction." This clause is pro-buyer. Consider objecting if the foreign party attempts to exclude this remedy. Otherwise, remain silent and the "unilateral price reduction" remedy should become effective.

- If the CISG will govern, recognize the absence of defined trade terms. Consider incorporating a trade terms regime such as the International Chamber of Commerce Official Rules for the Interpretation of Trade Terms (Incoterms)(2000).

- If the CISG will govern, recognize some uncertainty with respect to the applicable statute of limitations, especially with nations which have not signed the Limitations Convention. Consider incorporating a limitations period in the contract.

- If the CISG will govern, recognize some uncertainty with respect to notice timing (including notice for non-conforming goods). Consider specifying specific periods of time for certain types of notices.

- If the CISG will govern, recognize that the Convention does not provide for assignment of contract rights. Consider whether assignment may be appropriate and if so incorporate assignment provisions in the contract.

- If the CISG will govern, recognize that the Convention does not specify a specific rate or formula for the calculation of interest on damages claims. Consider incorporating a clause specifying a particular interest rate or method of calculation (ie. an index).

- If the CISG will govern, recognize that there are many extremely important issues for international commerce which are not addressed in the Convention, including for example: choice of forum; submission to jurisdiction; alternative dispute resolution (mediation, conciliation or arbitration); language of contract; language of dispute adjudication; attorneys' fees for disputes (ie. loser pays); choice of law for any gaps in CISG; and many other issues. Carefully consider the various unique international issues and tailor the contract accordingly.

LEGAL DISCLAIMER: This outline is designed to provide general information concerning the United Nations Convention on Contracts for the International Sale of Goods. It is provided with the understanding that the author is not providing legal advice. This outline should not be used as a substitute for professional legal advice in specific situations. If legal advice is required, a legal professional should be engaged to render such advice. Although this outline is designed to provide accurate information as of October 2000, the rules and laws described herein may change. Attorneys dealing with specific legal problems should conduct independent legal research.