

LAW ON THE PROPOSAL TO ENTER INTO AND ACCEPTANCE OF THE PROPOSAL TO ENTER INTO A CONTRACT FOR THE INTERNATIONAL SALE OF GOODS

Nguyen Tuan Anh¹

¹*Department of academic quality assurance and testing, Nam Can Tho University*

Abstract: *International goods sale contracts (IGSCs) signed between parties who meet in person often involve simple signing processes based on direct negotiations. However, for IGSCs signed between parties located far apart, direct negotiation is not feasible. As a result, international goods sales primarily occur through the stages of: offer to enter into a contract (sending an offer or placing an order) and acceptance of the contract (accepting an offer or accepting an order). By comparing the provisions of the 1980 Vienna Convention (CISG) and the 2015 Vietnamese Civil Code (VCC) governing IGSCs, particularly during the offer stage, this study highlights limitations and shortcomings in legal regulations governing the sale of goods. This analysis contributes to improving the legal framework for protecting the rights and interests of parties during the offer and acceptance stages of contract formation.*

Keywords: *Offer to enter into a contract, acceptance of an offer, contract, international sale of goods*

1. TO STATE THE PROBLEM

The global trade landscape is experiencing explosive growth, driving collaboration and commerce among traders in various countries and territories. The rapid development of electronic platforms and communication networks has made it significantly faster and easier to find partners for contractual agreements compared to the past. Individuals using these platforms to buy and sell goods and services seek partners worldwide and often pay little attention to the other party's location. However, the processes of making offers (offering to enter into a contract) and accepting offers (accepting an offer to enter into a contract) must still be governed by a specific legal system. Fundamental differences in the regulations governing relationships during the offer stage, the principles governing these relationships, and the choice of governing law pose significant challenges in practice.

In order to harmonize the principles for determining the governing law and to eliminate the difficulties and risks arising from legal uncertainties that may hinder the making of offers and the conclusion of contracts, the United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted at a diplomatic conference in April 1980, organized by UNCITRAL. The enactment of the 1980 Vienna Convention has contributed to

resolving legal conflicts in the governing law of international contracts for the sale of goods among different legal systems of the contracting parties' nationalities.

By comparing the provisions of the 1980 Vienna Convention with the provisions of the 2015 Civil Code, specifically in relation to the offer, acceptance, and conclusion of contracts, this paper focuses on analyzing the strengths and weaknesses of the law. Furthermore, it identifies the shortcomings of the law that affect the offer and acceptance stages of contract formation, potentially causing disadvantages to the parties involved.

2. OFFER (OFFER TO ENTER INTO A CONTRACT)

An offer can be considered an action by either the buyer or the seller to provide specific details aimed at establishing a purchase and sale contract for a particular good. Accordingly, an offer can be seen as a proposal to enter into a contract as stipulated in the 2015 Civil Code. However, not all invitations to enter into a transaction, such as exchanging information about trading conditions or making conditional proposals, constitute an offer or a proposal to enter into a contract. To be considered an offer, certain legal requirements must be met:

Article 14 of the CISG stipulates: *“(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes the quantity and price, or sets out the manner in which these are to be determined. (2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make an offer, unless the party making the proposal clearly indicates otherwise”*. Accordingly, an offer is not merely an expression of the will or need of the party wishing to enter into a contract. It must also clearly set out the essential elements upon which the parties can rely to perform their obligations. Thus, an offer must contain at least three elements: (i) the clarity of the proposal; (ii) the identity of the offeree; and (iii) the offeror's intention to be bound by the offer.

Legally, Article 15 of the CISG stipulates that an offeror is bound by their offer from the time it reaches the offeree. This is the period during which the offeror is bound by their offer and also the period within which an acceptance by the offeree is effective. However, the stipulation of a time limit for the offer is not considered a constituent element of an offer. Therefore, if the offer does not specify a time limit, the offeree should accept within a reasonable time, otherwise the acceptance will be ineffective. The determination of a "reasonable time" depends on the specific circumstances of the transaction and is usually determined by trade usages.

Accordingly, the author recognizes that the legal responsibility for an offer is both a consequence and a condition to ensure the fulfillment of commitments to the offeree. However, the author argues that the responsibility of the offeror is limited in cases where the offer has not yet been responded to by the offeree. Referring to Article 14 of the CISG, the time limit for responding to an offer is not considered an element constituting an offer. Therefore, in the absence of a time limit for acceptance, the offeror remains liable, and the response time is determined within a reasonable period. The vagueness and lack of specificity in defining the term "reasonable time" leads to various interpretations and inconsistent solutions in resolving disputes related to the response time to offers. This often leads to different legal sources posing risks of adverse rights for the parties during the contract formation stage.

Furthermore, regarding the effective date of an offer, the author has identified fundamental differences between Vietnamese law and the CISG. Specifically, according to point b, clause 1 of Article 388 of the 2015 Civil Code, if the offeror does not specify the effective date, the offer becomes effective when it is received by the offeree. This provision is generally in line with the CISG's provisions on the offeror's binding obligation. However, the 2015 Civil Code has a unique and more developed provision than the CISG, allowing the offeror to specify the effective time of the offer.

According to Article 15.2 of the CISG: "An offer, even if it is irrevocable, can be revoked if the revocation reaches the offeree before or at the same time as the offer." Consequently, it can be understood that although an offer has been made, it is not binding on the offeror until it reaches the offeree. The offeree can only consider accepting the offer after receiving it. Any purported acceptance prior to the receipt of the offer, based on information from other sources, even if coincidentally correct, is ineffective.

While the CISG and the 2015 Civil Code (BLDS) have similar provisions regarding the revocation of offers, the BLDS introduces an additional circumstance where the offeror can revoke the offer if the offeree has clearly indicated that the offer may be modified or revoked under certain conditions, as stipulated in point b, clause 1 of Article 389 of the BLDS. Revocation of an offer means terminating the validity of an offer that has already taken effect. The revocation becomes effective when the notice of revocation reaches the offeree before they send their acceptance. Unlike the CISG, Article 390 of the BLDS sets forth two requirements for revoking an offer: *(i) the offer must clearly state the right to revoke; and (ii) the offeree must receive the notice of revocation before sending their acceptance.* Cases like *Drennan v. Star Paving Co* have clarified the instances where an offer cannot be revoked, as stipulated in Article 17 of the CISG. According to this article, a revocation is only effective for revocable offers. If

the offeree has already taken steps to accept the offer and can prove it, the offeror is bound by their offer and cannot revoke it. The revocation is only effective when the offeree does not accept the offeror's conditions and sends a notice of rejection, at which point the offer lapses and the offeror is no longer bound.

As shown in the above provisions, both the CISG and the 2015 Civil Code (BLDS) have similar regulations regarding the revocation or cancellation of offers. However, compared to the CISG, the BLDS 2015 adds an additional circumstance where the offeror can revoke the offer if the offeree has clearly indicated that the offer may be modified or revoked under certain conditions, as stipulated in point b, clause 1 of Article 389 of the BLDS. Accordingly, the revocation of an offer means terminating the validity of an offer that has already taken effect. The revocation becomes effective when the notice of revocation reaches the offeree before they send their acceptance (CLOUT case No. 1151, Higher Court in Ljubljana, Slovenia, 9 April 2008). Unlike the CISG, Article 390 of the BLDS 2015 sets forth two requirements for revoking an offer: *(i) the offer must clearly state the right to revoke; and (ii) the offeree must receive the notice of revocation before sending their acceptance.* The provisions regarding irrevocable offers have been explained in the dispute of Drennan v. Star Paving Co (PGS. TS. Nguyễn Bá Bình, 2021). According to Article 17 of the CISG, a notice of revocation is only effective for revocable offers. For irrevocable offers, if the offeree has taken steps to accept the offer and can prove it, the offeror is bound by their offer and cannot revoke it. The revocation is only effective when the offeree does not accept the offeror's conditions and sends a notice of rejection, at which point the offer lapses and the offeror is no longer bound.

3. ACCEPTANCE OF AN OFFER (ACCEPTANCE OF A CONTRACT OFFER) AND REFUND FOR THE OFFER

Acceptance is an unconditional agreement to all terms of the offer, at which point a contract is formed. This is similarly stipulated in Article 393 of the 2015 Civil Code regarding acceptance of a contract offer. Article 18 of the CISG stipulates that the offeree may accept an offer by a statement or by conduct that evinces acceptance. An acceptance becomes legally effective when it is 'unconditional' and is made within the time prescribed in the offer or, if no time is prescribed, within a reasonable time.

On the other hand, Article 21(2) of the 1980 CISG and Article 394(2) of the 2015 Civil Code provide that: *“if the acceptance of a contract offer is received after the expiration of the time prescribed therefor by reason of circumstances beyond the control of the party accepting and if such circumstances are such as to account for the delay, the acceptance is effective unless notice rejecting it is dispatched without undue delay”*. This provision tends to favor the offeror,

as there are many cases where the offeree sends a notice of acceptance within the prescribed time but the notice does not reach the offeror. The offeree, believing that the notice has been received and the contract has been formed, may have already taken necessary steps and arrived to receive the goods. However, when the offeree arrives, the offeror has already sold the goods to another party. In such cases, it is clear that the offeree suffers damages due to their honest and good faith conduct (Nguyen Van Luyen, 2011).

An offer that is not met with an express acceptance cannot be construed as accepted by the offeree's silence or inaction. Whether silence constitutes acceptance depends on various factors within the context of the transaction. These may include legal customs or established trade practices, as stated in Article 9 of the CISG. The Southern District Court of New York has affirmed that prior dealings between the parties may impose a duty on the seller to object promptly and that a delay in objecting can be construed as acceptance (*Filanto, S.p.A. v. Chilewich International Corp.* (1992)). Article 18(2) of the CISG stipulates that an acceptance of an offer is effective when it reaches the offeror. However, an acceptance is not effective if it does not reach the offeror within the time prescribed by him or, if no time is prescribed, within a reasonable time, taking into account the circumstances of the transaction, including the speed with which information can be transmitted between the place where the offer was made and the place where the acceptance is addressed. An offer made orally must be accepted immediately unless the circumstances indicate otherwise.

4. SIGNING AND ENFORCEABILITY OF A CONTRACT

According to the 1980 Vienna Convention, the time at which the offeree receives the acceptance does not give rise to the effectiveness of such acceptance, but only when the offeror receives the acceptance within a time limit stipulated in Article 18 of the 1980 Vienna Convention. Compared to the provisions of Vietnamese law on the time of contract formation for an offer (proposal to enter into a contract), there is consistency in terms of determining the time at which the parties are bound by rights and obligations. However, the Vienna Convention distinguishes between the effectiveness of an acceptance and the time of contract formation. This enables the 1980 Vienna Convention to specifically and accurately determine the conditions for the effectiveness of an acceptance, thereby determining the time of contract formation as the time at which the acceptance becomes effective in accordance with Article 23 of the CISG.

When an acceptance of an offer becomes effective, the parties are bound by the rights and obligations embodied in a legal form known as a contract. Therefore, the determination of the time of contract formation must be considered and determined based on the effectiveness

of the acceptance of the offer. A separate determination of the conditions for the effectiveness of an acceptance and the time of contract formation would render the determination of the effectiveness of the acceptance meaningless.

Based on the foregoing, the author argues that the 1980 Vienna Convention is superior in determining the time of contract formation, thereby eliminating risks and inconsistencies between the "acceptance of an offer" stage and the "contract formation" stage. Specifically, Article 394(1) of the 2015 Civil Code on the time limit for responding to an offer stipulates: *"When the offeror has set a time limit for a response, the acceptance is only effective if it is made within that time limit; if the offeree receives a response after the time limit has expired, such acceptance shall be considered a new offer made by the party that is late in responding."* Accordingly, an acceptance of an offer to enter into a contract only takes effect when the offeror receives the acceptance within the stipulated time limit. A late reply is considered a new offer. In comparison with the provision in Clause 1, Article 400 of the 2015 Civil Code, which stipulates that a contract is concluded at the time the offeror receives the acceptance. Through this, it can be seen that although Article 394 of the 2015 Civil Code determines the effective time of the acceptance of an offer to enter into a contract as the time the offeror receives the acceptance within a stipulated period of time, the time of contract conclusion in Article 400 of the 2015 Civil Code is determined as the time the offeror receives the acceptance, regardless of the time limit of the offer or the validity of the acceptance of the offer to enter into a contract.

On the other hand, in cases where the parties communicate directly with each other, including by telephone or other means, the offeree must respond immediately with an acceptance or rejection, unless the parties have agreed on a response time. Thus, under Clause 3, Article 394 of the 2015 Civil Code, the principle is that the offeree must respond immediately to an offer for it to be considered valid, but the law still recognizes cases where the parties have a different agreement on the response time, and the acceptance of the offer by the offeree after that is still considered valid. However, Article 400 of the 2015 Civil Code, which regulates the time of contract conclusion, omits the time of contract conclusion in cases where the parties directly communicate with each other, by telephone or by other means. The separation of the conditions for determining the time of contract conclusion from the conditions for the effectiveness of the acceptance of an offer has led to a lack of comprehensiveness and accuracy in determining the time of contract signing, leading to a discrepancy between the effective time of an acceptance of an offer and the time of contract signing by the parties.

5. CONCLUSION

An offer or a proposal to enter into a contract is considered a declaration of a binding obligation to the specific terms of the offer as prescribed by law. This is the stage where the offeror expresses the intention to enter into a contract and the declarations of responsibility accompanying those offers are clearly defined within a certain period of time. The parties can only proceed to enter into a contract when the offeree fully accepts the offer. However, during this stage, the rights and obligations of the parties to each other based on the contents of the offer have not yet been formed, but the offeror is still bound by the commitments made in the offer to enter into a contract.

Therefore, during this period, the contract between the two parties has not yet been formed, so in order to protect the legitimate rights and interests of the parties, the law needs to have specific provisions on the scope and time of termination of the obligations of the offer to enter into a contract, the time limit and validity of the response to accept the offer, as the basis for accurately determining the time of contract formation. This issue becomes even more urgent in the era of developing integration and promoting trade between countries, the buying and selling of goods between domestic organizations, individuals and foreign individuals and organizations is increasing rapidly. Accordingly, the legal issues governing international goods purchase contracts must be paid more attention to and developed, promoting the building of legal regulations in the field of international trade to approach the provisions of international law, inheriting the progressive points, and towards the implementation of good policies to attract foreign investment.

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