

KLRI-UNCITRAL Joint Research : Perspectives and Trends(VI)

CISG Implementation in Asia and the Pacific

Lisa Spagnolo



한국법제연구원
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Abstract

The United Nations Convention on Contract for the International Sale of Goods (CISG; Vienna Sales Law) has been increasingly adopted throughout the world. This report focuses on its reception within the Asia Pacific region. To this end, the report examines a wide range of matters, including the background of commercial law in the Asian Pacific region; the extent to which the CISG has already been, or is about to be, adopted; and regional trends affecting the speed of its adoption. This report also considers the CISG's technical implementation, its comparative efficiency, and practical problems in regards to its exclusion and use amongst contracting parties. It examines the data available for testing any economic impact of the CISG's implementation in the region, and considers its role in regional multilateral and bilateral trade agreements. The report concludes that the CISG may have already had a positive economic effect in the region, and that regional adoption trends may in part explain its slow initial reception within the Asia Pacific region. Other behavioural economic reasons explain some less than optimal trends in the CISG's use amongst contracting parties, and this report recommends technical measures be implemented alongside formal adoption to maximize any potential economic benefits. Finally, this report recommends a co-ordinated approach towards ratification and indeed national law reform facilitated by future regional trade agreements.

 **Key Words:** CISG, Vienna Sales Law, Convention on Contracts for the International Sale of Goods, harmonized law, economic effect of the law, implementation of law, contract law, sales law, Asia Pacific region

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I . Introduction: Outline of the Study, Scope and Methodology

A. Purpose of Research

This study has been commissioned by the Korea Legislation Research Institute, and carried out by Dr Lisa Spagnolo, Faculty of Law, Monash University, Australia. The Korea Legislation Research Institute requested an 80 page report on the UN Convention on Contracts for the International Sale of Goods (CISG)¹⁾ in the Asia Pacific Region to be completed by around November 2013.

The purpose of the research will be to outline the likelihood that the CISG will be widely adopted within Asia and the Pacific, and its influence in the region.

The author gratefully acknowledges the kind assistance of research assistants, Lauren Peacock and Matthew Vethecan, in the preparation of this report.

The nature of the research will encompass a number of relevant issues, including influences on commercial law in the region, its development at a national and international level, the extent to which the CISG has been adopted already, and its potential for adoption in the future. The manner in which it has been implemented and used in practice is relevant when considering its impact. Additionally, the interaction, or potential interaction, between the CISG and regional trade agreements or other initiatives in the region will affect the extent to which the CISG takes effect. In all this, the efficiency of the CISG is an important consideration.

1) *United Nations Convention on Contracts for the International Sale of Goods*, opened for signature 11 April 1980, 1489 UNTS 3 (entered into force 1 January 1988).

Not all these issues can be covered comprehensively by a report of this length. Instead, this study aims to highlight what is known to date regarding these issues, and indicate areas in which further research may be beneficial to gain a better understanding of the impact the CISG is having, or could have, in the Asia Pacific region. Importantly, recommendations will be made in light of the study as part of the report's conclusions in Chapter VII. The findings of this report may therefore prompt further research, and indeed, encourage (or discourage) governments in the region to consider adoption or implementation measures. To this end, it is anticipated that parts of this report may be reproduced as journal articles.

B. Scope

This report attempts to conduct to a limited degree some primary research in the sense of gathering new statistical evidence directly from sources within the economic region.

This report also presents and analyses existing statistical material to the extent that it is relevant in assessing the effects of the CISG. Naturally, there are always limitations on the significance of existing data in providing evidentiary support for a particular effect, economic or otherwise, and these will be discussed in relation to specific data sets.

In other respects, this report relies on journals, books, websites operated by pertinent institutes, government reports, intergovernmental materials and discussions with legal practitioners and officers of organizations holding key strategic positions within the region.

C. Methodology

In relation to the efficiency of the CISG per se, and its efficiency when considered comparatively in relation to other popular choices of law, this re-

port provides a brief overview based upon earlier work done by the author which is soon to be published as a book with Kluwer International. The approach used in relation to efficiency is therefore the approach utilized in that work: a rational economic analysis of the features of the CISG according to standard economic theories relevant to contract law, supplemented by a deeper understanding of choices of law decision-making practices informed by a behavioural economics background.

The balance of this report relies on doctrinal approaches to the analysis of the law, but naturally also encompasses a comparative law approach where necessary to explain attitudes towards the CISG and its impact in the Asia Pacific region.

D. Comments and Queries

Comments and queries are most welcome, and readers are kindly invited to contact the author, Dr Lisa Spagnolo, at Monash University, by email at: lisa.spagnolo@monash.edu.

II. Background and Influences on Commercial Law in Asia and the Pacific

A. Introduction

An appreciation of the legal context in which the decision to adopt or refrain from adopting the CISG is important to an overall understanding of how harmonization of sales law might proceed within the region. This chapter of the report presents an overview of the background to the legal systems of commercial law within the Asia Pacific region.

B. Outline of Legal, Political, Cultural Influences in the Region

The following presents a general overview of the systems in place in the Asia Pacific region according to various taxonomies.

a. Cultural, Religious and Political Influences

- 1) Although comments are sometimes made about “Asian legal culture”, there are naturally many different legal cultures within Asia, and one should be careful not to underestimate the very important influence of cultural factors upon legal systems in the region.²⁾ These are “typically underanalysed in legal writing about dispute resolution in Asia.”³⁾ In fact, it may not even be meaningful to talk about “Asian law” or “Asian legal culture”, but instead, more accurate to describe “law that originates in Asia.”⁴⁾

2) Michael Pryles and Veronica Taylor, in Pryles (ed) *Dispute Resolution in Asia*, (Kluwer Law International, 3rd ed, 2006) , p 2.

3) Id.

4) Id., (citing Christoph Antons, ‘Analysing Asian Law: the Need for a General Concept’

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- 2) At a very general level, a few basic differences in relation to religious and cultural influences on the law can be described. There is said to be an “accepted, national cultural ideal [of] interpersonal ‘harmony’ in Japan; Confucian propriety in Korea; Buddhist values and reverence for the monarchy in Thailand; [and] ‘consensus’ in Indonesia.”⁵⁾
- 3) Furthermore, in terms of political and constitutional taxonomy, within the Asia Pacific region we find:
 - **Socialism** - Burma (Myanmar); Cambodia, Peoples’ Republic of China; Laos PDR; North Korea; and Viet Nam;
 - **Democracy (i.e. Constitutional Monarchy)** - Australia, Brunei; Japan; Malaysia; Nepal; New Zealand; and Thailand; and
 - **Democracy (i.e. Republic)** - Indonesia; South Korea; Philippines and Singapore.⁶⁾

b. Historical Colonial and Religious Influences

- 1) Furthermore, the distant and recent history of colonialism that prevails throughout the region has left many and varied legal legacies. These have been described as ranging from “European comparative law... to ‘Far Eastern’ or ‘Islamic’ legal families.”⁷⁾ Thus we can apply a further taxonomy:
 - **Civil law systems** - Indonesia (from Netherlands/France); South Korea (from Germany/Japan); Taiwan (from Japan); Philippines (from Spain/USA); and Thailand (mixed from England/Japan);
 - **Common law systems** - Australia, India, Malaysia, Pakistan, Philippines, Singapore, Hong Kong SAR, and New Zealand;

(1995) 13 *Law in Context* 106, 116).

5) *Id.*, p 5.

6) *Id.*, p 5 (this breakdown is somewhat adapted from the original).

7) *Id.*, p 8.

- **Islamic law** - Brunei; Indonesia; Malaysia; and
- **Socialist legal systems** - Burma (Myanmar), Cambodia; Laos; Malaysia; Nepal; Pakistan; Singapore; Thailand; and Viet Nam.⁸⁾

2) As most legal systems within the region cut across multiple categories, “classical comparative law taxonomies are [] of limited utility.”⁹⁾ In other words, the “Asia Pacific” region encompasses a myriad of legal cultures, families and customs, and one must avoid making any sweeping generalizations.

C. Brief Description of Individual Nations

a. *Australia*

- 1) Australia is a federation of states (like the United States of America) and a constitutional monarchy (like Britain). Given its heavy historical influence as a former colony of England until 1900, and appeals from its courts to the English Privy Council until 1986, it is not surprising that Australia is a common law country¹⁰⁾ which has been significantly influenced by legal developments in the UK.¹¹⁾
- 2) For example, the Sale of Goods legislation in each Australian state is heavily derived from the UK legislation of the nineteenth century. In more recent times, some influences can be seen from the US (for exam-

8) Id.

9) Id. See also, A Marfoding, ‘The Fallacy of the Classification of Legal Systems; Japan Examined’ in V Taylor (ed) *Asian Laws Through Australian Eyes* (LBC Sydney 1997), p 65.

10) *Australia* (28 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html> > (describing Australia as having a common law system based on English law).

11) Wolters Kluwer, *International Legal Encyclopaedia - Commercial and Economic Law*, 45 (October 2012) Australia, ‘Australia Law in a Global Context’, p 40.

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ple, in the structure of the Australian constitution) and from Europe (for example, in competition law and consumer protection measures). US law has also influenced Australian competition law.¹²⁾

- 3) Australia has also been the source of some novel legal developments which have influenced other legal systems, such as the development of the land title registration system known as “Torrens title,” which has been adopted in one form or another by many countries both within the region and beyond. Australian case law has also developed the concept of estoppel not only as a defence to an argument of lack of consideration in contract, but also as an independent cause of action. This Australian innovation has not been adopted in England.
- 4) Regarding its trade and economy, Australia and New Zealand’s markets have grown increasingly interdependent, with the two countries entering into the Australia-New Zealand Closer Economic Relations Trade Agreement, which has promoted harmonization of the commercial laws of the two countries.¹³⁾ China is Australia’s largest export market since 2009 and largest single source of imports.¹⁴⁾ Australia is also a signatory to various trade agreements, including the:
 - Asia-Pacific and Economic Co-Operation Forum (APEC);
 - South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA); and
 - World Trade Organization (WTO).¹⁵⁾
- 5) Australian contract law can be found in various pieces of legislation and case law (common law). As mentioned in the Attorney General’s Discussion Paper of 2012,¹⁶⁾ these disparate sources of law may not be

12) Id, 40.

13) Id, 43.

14) Id.

15) Id.

16) Attorney-General’s Discussion Paper ‘Improving Australia’s Law and Justice

efficient for trade. Australia implemented the CISG in legislation as required by its constitutional system, but as Australia is a federal system, this had to be done in a separate legislative measure for each State, Territory and at the federal level.

- 6) As a common law country, Australian courts follow a doctrine of precedent system that requires each court to follow past decisions made by higher courts in similar cases. Case law from the US, Canada and UK is also persuasive.¹⁷⁾

b. Bangladesh

- 1) Bangladesh was under Muslim rule for over 500 years before the English came in the 17th Century, when it became a British Indian province. Following termination of British rule in 1947, Bangladesh became a part of Pakistan, and was known as East Pakistan. In 1971, following a civil war, Bangladesh gained independence.¹⁸⁾ Between 1971 and 1991 the country still faced political violence, however has had a democracy since that time.¹⁹⁾
- 2) Its constitution was first established in 1971, and has been amended 15 times.²⁰⁾ The constitution provides for an independent judiciary tasked with statutory interpretation.²¹⁾ While the Bangladeshi legal system was

Framework: A Discussion Paper to Explore the Scope for Reforming Australian Contract Law' (July 2012), available at <<http://www.ag.gov.au/consultations/pages/ReviewofAustraliancontractlaw.aspx>>.

17) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 78 (July 2013) Australia, 'Sources of the Law of Contract' pp 35 - 36.

18) Wolters Kluwer, *International Legal Encyclopaedia - Environmental Law* 32 (April 2001) Bangladesh, 'Introduction' p. 14. See also generally, Pranab Kumar Panday and Md. Awal Hossain Mollah, 'The judicial system of Bangladesh: an overview from historical viewpoint' (2011) 53(1) *International Journal of Law and Management* 6, pp 6-31.

19) Wolters Kluwer, above n 18, pp 24-26.

20) *Id.*, p 16.

21) Asian Development Bank, *ADB Report and Recommendation of the President to the*

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originally based on English common law (case law), most laws in Bangladesh are currently in the form of statutes enacted by parliament. Bangladesh may be described as having a mixed system of English common law and Islamic law.²²⁾

- 3) Bangladesh is one of the world's poorest and least developed countries,²³⁾ in part due to poor public financial management, and there are high levels of corruption.²⁴⁾

c. *Bhutan*

- 1) Bhutan can be described as a "small Himalayan state that has only recently decided to break its traditional isolation, opening its society to Western culture and building a legal system in the Western sense of the term from scratch."²⁵⁾ Until a just few years ago, it could claim to be the world's last "absolute monarchy".²⁶⁾
- 2) Bhutan has a legal system based upon Buddhism, however in developing a more comprehensive system has borrowed from the USA, India, UK and Australia.²⁷⁾ Currently Bhutan can be described as having a civil law system based on Buddhist religious law,²⁸⁾ but much of its legislation - most of which was adopted in the period 1999-2000 - has

Board of Directors - Good Governance Program, ADB Report PN 37017, October 2007.

22) *Bangladesh* (25 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html>>

23) Wolters Kluwer, above n 18, pp 15 - 16.

24) ADB, above n 21, pp 6 - 7; Panday and Mollah, above n 18 p 26.

25) Alessandro Simoni and Richard W Whitecross, 'Gross National Happiness and the Heavenly Stream of Justice: Modernization and Dispute Resolution in the Kingdom of Bhutan' (2007) 55(1) *The American Journal of Comparative Law*, 165, 165 - 168 .

26) David A Andelman, 'Bhutan, borders, and bliss' (2010) 27(1) *World Policy Journal* 103, 103.

27) See generally, Id.

28) *Bhutan* (25 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/bt.html>>

been borrowed and adapted from the common law countries mentioned above with international technical assistance.²⁹⁾ These include the Commercial Sale of Goods Act.³⁰⁾

- 3) New laws must pass through the Gross National Happiness Commission (as provided by their Constitution).³¹⁾ The adoption of Western-style reforms is said to take place in a “soft” way, with support for vague concepts such as “rule of law” and “good governance”.³²⁾

d. Brunei

- 1) Brunei’s predominantly Malay culture is similar to that of Malaysia, with a similar mix of Malays, Chinese and Indigenous non-Malays. Importantly, the culture embraces collectivist culture.³³⁾ Brunei’s legal system bears mixed influences from both Islamic law and British common law.³⁴⁾ Islamic law is known in Brunei as the “Syariah”, a distinctive Malay flavour of Islamic law “as opposed to Arabic or South East Asian, character”, and infused with indigenous *adat* elements.³⁵⁾ Brunei-Darussalam was a colony of Britain until 1984, and the British influence is especially evident in relation to its court system.³⁶⁾ Although appeals to the Privy Council in England are still possible, their possibility has been curtailed.³⁷⁾

29) Simoni and Whitecross, above n 25, p. 176.

30) Id.

31) Andelman, above n 26.

32) Simoni and Whitecross, above n 25, p. 166.

33) Ann Black, ‘Alternative Dispute Resolution in Brunei-Darussalam: the Blending of Imported and Traditional Processes’ (2001) *Bond Law Review* 14, text at fn 20.

34) Tsun Hang Tey, ‘Brunei’s Revamped Constitution: The Sultan as the Grundnorm?’ (2007) 9(2) *Australian Journal of Asian Law*, 264.

35) Ann Black, ‘Brunei Darussalam’ in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptions and Innovations* (Cambridge, 2011), pp 299, 306.

36) Tey, above n 34; Black, id., p. 299.

37) Black, above n 35.

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- 2) Its commercial and civil law is essentially that of England,³⁸⁾ which remains the primary source of law for civil courts in Brunei. Indeed, under the the 1951 Application of Laws Act, the common law and statutes of England have force of law in Brunei, with the qualification that local circumstances and customs may “render necessary” the limitation of its application.³⁹⁾

e. Burma/Myanma

- 1) Burma has a mixed legal system of English common law (as introduced in codifications designed for colonial India) and customary law.⁴⁰⁾ Parts of the Burmese law reflect Buddhist principles.
- 2) Burma is a former British colony, and during colonization, English common law and the English-Indian law designed by the British for India were imposed.⁴¹⁾ The rule of law is still undeveloped in Burma, and while some argue this is partly due to British colonial practices,⁴²⁾ many events have contributed.⁴³⁾

f. Cambodia

- 1) Cambodia’s current economic and legal development is still marred by efforts to move on from the politically violent and disastrous regime of Pol Pot.⁴⁴⁾ Since 1992, the country has been moving from a socialist

38) Id.

39) Black, above n 35, p. 305.

40) *Burma* (4 November 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>>.

41) Ronald J Daniels, Michael J Trebilcock and Lindsey D Carson, ‘Legal of Empire: the Common Law Inheritance and Commitments to Legality in Former British Colonies’ (2011) 59 *American Journal of Comparative Law* 111, p. 135.

42) Id, pp 168-170.

43) Id., p. 135.

44) Siphana Sok, *Role of Law and Legal Institutions in Cambodia Economic Develop-*

system towards greater integration with the global economy.⁴⁵⁾ In 2003, Cambodia became a member of the WTO. The 2008 Organic Law provides the core administrative basis for decentralization reforms.⁴⁶⁾

- 2) Cambodia's legal system includes French civil law influences, introduced during French colonization, socialist legal traditions, and laws introduced by the United Nations Transitional Authority of Cambodia (UNTAC).⁴⁷⁾ Thus its legal system can be described broadly as a civil law system influenced by the UN Transitional Authority, customary law, communist legal theory and common law.⁴⁸⁾
- 3) Its Law on Contracts and Other Liabilities of 28 October 1988 was inspired by the French Civil Code.⁴⁹⁾ Sok argues that Cambodian contract law is unpredictable, and that this in turn affects economic development. Sok claims the 1988 Decree Law No. 36 on Contract does set out a broadly appropriate framework, however, no provision of this law has ever been interpreted by the Cambodian courts. Thus there is a lack of enforcement of contractual obligations, and absence of consistent and impartial application of the law by the courts.⁵⁰⁾ Recently Cambodia reformed its Civil Code and Civil Procedural Code.⁵¹⁾

g. China

- 1) The People's Republic of China (PRC) was established in 1949. Since

ment, (Bond University, Dissertation [Doctor of Philosophy] submitted 2008), p 23.

45) *Id.*, p 25.

46) Tariq H Niazi, "Deconcentration and Decentralization Reforms in Cambodia," ADB Recommendations for an Institutional Framework, ADB (2011) pp 1, 9.

47) Sok, above n 44, p 27.

48) *Cambodia* (25 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>>.

49) Sok, above n 44, p. 83.

50) *Id.*, pp 233-234.

51) Zentaro Kitagawa, 'Development of Comparative Law in East Asia' in Reimann and Zimmerman (ed), *The Oxford Handbook of Comparative Law*, (Oxford University Press 2006), p. 243-244.

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the establishment of the PRC, China has carried on large-scale economic construction. It has a socialist market system, with rules that dictate resource distribution and control. China operates on “Five-years Plans”, and the tenth of these advocated “openness [to] the outside”.⁵²⁾ To this end it has undergone a series of legal reforms, and joined the WTO in 2001.⁵³⁾

- 2) China has a civil law system influenced by Soviet and continental European civil law,⁵⁴⁾ particularly German law, although it moves away from the German Pandectist approach.⁵⁵⁾
- 3) Legislation is created by either the National People’s Congress (NPC) (and its standing Committee), Local People’s Congresses (LPCs) (and their Standing Committees), State Council and its agencies, People’s Bank of China, Audit Administration, or other governmental organs.⁵⁶⁾
- 4) Law is interpreted through the explanations provided at the time of drafting, or by the NPC Standing Committee, which harmonizes any conflicting administrative and judicial interpretations of legal norms.⁵⁷⁾
- 5) The Supreme People’s Court issues Opinions which provide authoritative interpretations of the laws of China, and also bind courts. Thus the Supreme People’s Court acts as a quasi-legislative body, “making China distinguishable from other civil law countries at least with respect to law-making.”⁵⁸⁾

52) Wolters Kluwer, *International Legal Encyclopaedia - Commercial and Economic Law*, 41 (April 2011) People’s Republic of China, ‘General Introduction’ p. 31.

53) Jiangyu Wang, ‘Legal Reform in an Emerging Socialist Market Economy’ in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, (Cambridge, 2011), p. 25.

54) *China* (25 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>>.

55) Kitagawa, above n 51, p. 243-244.

56) Wolters Kluwer, above n 52, p. 32.

57) *Id.*, pp 33-34.

58) Wang, above n 53, p. 33.

6) One of the most important Opinions in relation to contract law was issued in 2012. The Chinese Contract Law 1999 closely follows the CISG and Unidroit Principles of Commercial Contracts.⁵⁹⁾ It was developed after an extensive comparative exercise, and follows a much more pragmatic than theoretical or Pandectist approach.⁶⁰⁾ Its Contract Law provides for formation, validity, performance, amendment, breach and assignment, as well as including provisions relating to 23 specific types of commercial and civil contracts.⁶¹⁾ Other relevant law includes the General Provisions of the Civil Code 1986.

h. Fiji

1) Fiji was a British colony, although it became an independent nation in 1970, retaining the British monarch as Head of State. In 1987 a military coup was staged, and in 1990, a new constitution was established. Since then Fiji has become a Republic.⁶²⁾ Fiji has a common law system based on English law,⁶³⁾ but does not follow English common law as precedent.⁶⁴⁾ The relevant contract law is the Sale of Goods Act, cap 230 (Fiji),⁶⁵⁾ based on the UK Sale of Goods Act. Fijian contract law requires consideration, but recognizes that estoppel can act as a defence (thereby displacing the need for consideration) and - taking the

59) Weidi Long, 'The Reach of the CISG in China: Declarations and Applicability to Hong Kong and Macao' in Schwenger and Spagnolo (eds), *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference* (Eleven International Publishing, 2011).

60) Kitagawa, above n 51, p. 257.

61) Id.

62) Don Paterson and Stephen A Zorn, 'Fiji', in Ntummy (ed) *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993), p. 28.

63) *China* (25 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>>

64) Paterson and Zorn, above n 62, p. 32.

65) Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law*, (Palgrave MacMillan, 3rd ed, 2011).

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Australian position - can also act as a cause of action.⁶⁶⁾

i. Hong Kong

- 1) Hong Kong, a former English colony, has retained the common law (including rules of equity, ordinances, subordinate legislation and customary law) that was in place before it became a Special Administrative Region (SAR) of China.⁶⁷⁾ The PR China's NPC now has law making power over Hong Kong. The Basic Law of Hong Kong, promulgated by PR China NPC, came into effect 1 July 1997, and Hong Kong's law and legal institutions are now laid upon a new constitutional foundation, which has nonetheless left them largely unchanged.⁶⁸⁾
- 2) Hong Kong has a hybrid mixed legal system of common law based on the English model and Chinese customary law (in matters of family and land tenure).⁶⁹⁾ English principles of private international law are utilized in Hong Kong.⁷⁰⁾ It has been argued that Hong Kong is one of the few common law transplants in a non-Western legal system that has been maintained in both a narrow and wide sense.⁷¹⁾
- 3) It is important to note that Hong Kong is amongst the top 10 largest trading economies, especially in relation to export of commercial services, especially air cargo, container shipping and trade foreign exchange, shares and gold.⁷²⁾

66) *Id.*, p. 213.

67) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 30 (October 2001) Hong Kong, 'General Introduction' pp 21 - 22.

68) Benny YT Tai, 'Hong Kong' in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptions and Innovations*, (Cambridge, 2011), p. 65.

69) For a detailed analysis of the nature of this mix, see Ignazio Castellucci, 'Legal Hybridity in Hong Kong and Macau' (2012) 57 *McGill Law Journal* 665.

70) Wolters Kluwer, above n 67 p. 15.

71) Tai, above n 68, p. 63.

72) *Id.*

j. India

- 1) India is the world's second-most-populous country, home to 16% of the world population. It is a developing country with a mixed, but essentially still agricultural economy.⁷³⁾ It is a union of states, and a Sovereign Socialist Secular Democratic Republic, governed by a constitution instituted in 1950.⁷⁴⁾
- 2) As a former British colony, it continues in the English common law tradition,⁷⁵⁾ as there was a strong level of integration between its pre-existing court system and the British-imposed system.⁷⁶⁾ However, separate personal law codes apply to Muslims, Christians, and Hindus.⁷⁷⁾
- 3) It has been argued that the Indian system of law has “demonstrated remarkable stability, buttressing six decades of democracy in one of the world's most diverse countries”, which might be attributable to the “cautious approach to the transplantation of the legal system and rules reflect[ing] their acknowledgement of the pre-existing Hindu and Muslim codes of conduct”.⁷⁸⁾ During colonial times, English common law was codified in legislation, thus legislation is the most common source of law in India. Common law (case law) is another source.⁷⁹⁾
- 4) Contracts are governed by the Indian Contract Act 1872. Consideration is required for the contractual validity, although the doctrine of promissory estoppel is also recognized.⁸⁰⁾

73) Wolters Kluwer, *International Legal Encyclopaedia - Commercial and Economic Law*, 47 (2013) India, ‘General Introduction’ pp 41 - 42.

74) *Id.*, p. 30.

75) *Id.*, p. 63.

76) Daniels et al, above n 41, p. 131.

77) *India* (31 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html>>.

78) Daniels et al, above n 41, p. 134.

79) *Id.*

80) Wolters Kluwer, above n 67, p. 39.

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k. Indonesia

- 1) Indonesia's legal family is of the civil law tradition, based on Dutch civil law, as it is a former Dutch colony. The Dutch introduced certain laws, such as the Dutch Civil Code, however Indonesia maintained some native *adat* law.⁸¹⁾ Indonesia can therefore be described as a civil law system based on the Roman-Dutch model and influenced by customary law.⁸²⁾ Thus it contains layers of transplants including indigenous *adat*, Chinese practices, and some US/Western concepts overlaid upon a Dutch base.⁸³⁾
- 2) The Dutch Commercial Code of 1848 governs corporations, and remains basically unchanged since 150 years ago. In 1999, Indonesia's commitments to the IMF also led to the formation of the National Committee for Corporate Governance (NCCG) in 1999.⁸⁴⁾ Indonesia claimed independence in 1945. It developed new laws, however maintained those Dutch laws not in conflict with the new Constitution.⁸⁵⁾

l. Japan

- 1) Japan's economy comprises nearly 10% of the world's GDP, and is the third largest economy after China and the USA.⁸⁶⁾ However, presently,

81) Karen Mills, 'Indonesia' in Pryles (ed) *Dispute Resolution in Asia*, (Kluwer Law International, 3rd ed, 2006) p. 167; Gary Bell, 'New challenges for the Uniformisation of laws: how the CISG is challenged by 'Asian values' and Islamic law' in Schwenzer and Spagnolo (eds), *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference*, (Eleven International Publishing 2011), p. 9.

82) Gary Bell, 'Harmonisation of Contract Law in Asia - Harmonising Regionally or Adopting Global Harmonisations - The Example of the CISG' (2005) *Singapore Journal of Legal Studies* 362.

83) Petra Mahy, 'The Evolution of Company Law in Indonesia: An Exploration of Legal Innovation and Stagnation' (2013) 61 *The American Journal of Comparative Law* 378, pp 378, p. 418.

84) Id., p. 414.

85) Mills, above n 81, 167.

86) Wolters Kluwer, *International Legal Encyclopaedia - Corporations and Partnerships*,

Japan is losing its competitive advantages to China, India and Korea,⁸⁷⁾ having experienced several decades of sustained economic contraction. The Japanese constitution was established in 1946. The Diet is Japan's sole legislature,⁸⁸⁾ and judicial review of legislative acts take place in the Supreme Court.⁸⁹⁾

- 2) In 1893 German lawyers drafted the first Commercial Code for Japan, which was then followed by another one enacted in 1899.⁹⁰⁾ Though the code has undergone many amendments, German influences are still highly prevalent in the development of commercial law in Japan today.⁹¹⁾
- 3) The Japanese Civil Code 1898 was modelled in the German Pandectist style.⁹²⁾ However, it also contains French legal influences, as the 1890 Civil Code was based on the French Civil Code.⁹³⁾ The “reception of civil law theory” continued until the end of World War I,⁹⁴⁾ and is considered highly successful.⁹⁵⁾
- 4) Japan can therefore still be described as having a civil law system based on the German model, although it is debated whether Japan has a Western system of law.⁹⁶⁾ Its system also reflects Japanese traditions

64 (July 2012) Japan, ‘General Introduction’, p. 23 (as at 2012).

87) Id., p. 39.

88) Id., p. 34.

89) *Japan* (31 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>>.

90) Wolters Kluwer, above n 86, p. 80.

91) Id., p. 81; Hiroo Sono, ‘The Diversity of Favor Contractus: The Impact of the CISG on Japan’s Civil Code’ in Schwenger and Spagnolo (eds), *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference*, (Eleven International Publishing, 2011).

92) Kitagawa, above n 51, p. 239 (the Japanese Civil Code 1898 predating the German BGB 1900 by 2 years).

93) Id., p. 240.

94) Id., p. 241.

95) Id., p. 243.

96) Id., p. 243-5 (discussion of the adaptation of Western law and competing classifications of Japan’s legal system).

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and Anglo- American influences after World War II.⁹⁷⁾ Contemporary Japanese contract law was developed following World War II.⁹⁸⁾

- 5) In 2000 it introduced a Consumer Contracts Act regulating unfair terms in consumer contracts.⁹⁹⁾ Japan has engaged in reforms to its Civil Code after comparative studies of European, American and other laws, to introduce a “new limited liability capacity, registered securities transactions, and transfers of obligatory rights”.¹⁰⁰⁾

m. Marshall Islands

- 1) The Marshall Islands has a mixed system of common law, based on both US and English law, and customary law, together with local statutes.

n. North Korea (Democratic People's Republic of Korea)

- 1) A former Japanese colony, North Korea (DPRK) has a civil law system based on the Prussian model, influenced by Japanese and Soviet law.¹⁰¹⁾ Other influences include Chinese law and Confucian traditions.¹⁰²⁾ Its ongoing hostilities with South Korea continue to affect regional trade.

o. South Korea (Republic of Korea)

- 1) The Constitution of the Republic of Korea has been in place since 1948.¹⁰³⁾

97) Id., p. 242.

98) Takashi Uchida and Veronica L Taylor ‘Japan’s ‘Era of Contract’ in Foote (ed), *Law in Japan: A Turning Point*, (University of Washington Press, 2007), p. 455.

99) Id., p. 458.

100) Kitagawa, above n 51, p. 257.

101) Eric Yong-Joong Lee, ‘Legal Issues of Inter-Korean Economic Cooperation under the Armistice System’ (2002, Kluwer Law International), p. 88; *Korea, North* (28 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-fact-book/geos/kn.html>>.

102) Id. p. 88.

103) Wolters Kluwer, *International Legal Encyclopaedia - Competition Law*, (February

Its legal system can be described as a mixture of continental European civil law and Anglo-American law.¹⁰⁴⁾

- 2) Its law is mainly codified, and as such greatly reflects the civil law tradition in this sense.¹⁰⁵⁾ The basic legal framework for its dispute resolution and judicial procedure was initially based on civil law traditions, including those of Germany, France and Japan; however, Korea has developed its own laws.¹⁰⁶⁾ In the post-colonial period a tradition of “filling the gap between Korean tradition and Western law” has continued to influence Korean judiciary.¹⁰⁷⁾
- 3) The German BGB has been highly influential and Korean Civil Code follows a Pandectist system,¹⁰⁸⁾ indeed far more closely than in the case of Japan.¹⁰⁹⁾ The 2004 overhaul of the Civil Code has been influenced by both Japanese private law developments and by the German Law of Obligations 2001.¹¹⁰⁾ Korea remains committed to ensuring its judiciary have exposure to the latest in legal developments throughout the world, by a program of intensive research and secondments.¹¹¹⁾

p. Lao PDR

- 1) Due to French colonization of Indochina, Lao PDR has a civil law sys-

2011) Republic of Korea, ‘General Introduction,’ p. 17.

104) Id., p. 19; Chang-ho Chung, ‘The Application and Use of the CISG in South Korea’ in Schwenzler and Spagnolo (eds), *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference*, (Eleven International Publishing, 2011), 31.

105) Id., p. 19.

106) Sueng Wha Chang, ‘Republic of Korea’, in Pryles (ed) *Dispute Resolution in Asia*, (Kluwer Law International, 3rd ed, 2006) p. 237; Kitagawa, above n 51, p. 256.

107) Youngjoon Kwon, ‘Korea’ in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptions and Innovations*, (Cambridge, 2011), 151, p. 155.

108) Id., p. 158.

109) Kitagawa, above n 51, p. 256.

110) Id., pp 256-7.

111) Chang, above n ,106.

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tem similar in form to the French legal system.¹¹²⁾ It also has a code similar to the French Civil Code, incorporating customary law.¹¹³⁾

q. Macau

- 1) Macau is a SAR of China. Its system is based on the civil law tradition derived from the Portuguese model, as it was a former Portuguese colony. It also bears Chinese, as well as German, Italian and French influences.¹¹⁴⁾

r. Malaysia

- 1) Malaysia is a predominantly Muslim country with a dual system of law, including Syariah law and secular law.¹¹⁵⁾ Its system is one of mixed English common law, Islamic law and customary law.¹¹⁶⁾
- 2) Syariah applies to Muslims and covers matters such as religion, marriage, and so on. A prior colony of Britain, Malaysia has a common law system with English law applying to contracts.¹¹⁷⁾
- 3) In 2003, Malaysia embarked on a comprehensive corporate law reform program (CLRP) aimed at reinforcing corporate governance. In 2007 Malaysia enacted a Companies Act. Such amendments have now positively changed the Malaysian corporate landscape.¹¹⁸⁾

112) *Laos* (31 October 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/la.html>>.

113) Ministry of Justice, *Customary Law and Practice in Lao PDR* (2011, Lao PDR Government, Ministry of Justice).

114) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 57 (March 2009) Macau, 'General Introduction,' p. 21; *Macau* (31 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/mc.html>>.

115) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 65 (April 2011) Malaysia, 'General Introduction', p. 29.

116) *Malaysia* (31 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>>.

117) Wolters Kluwer, above n 115, p. 29.

s. *Micronesia, Federated States of*

- 1) The entire body of the Federated States of Micronesia law was transplanted from the US during a 40 year period when the US administered it. Micronesia has a mixed legal system of common law and customary law.¹¹⁹⁾ As a result of the legal transplant during American administration, the legal system is comprised mainly of US laws.¹²⁰⁾
- 2) Contracts are governed in accordance with US common law, which is the relevant law, however Courts have also noted that when interpreting contracts to keep in mind Micronesian values and customs, as Micronesians interpret such transactions differently.¹²¹⁾

t. *Mongolia*

- 1) Mongolia has been an independent state since 1921. For the first 70 years of its independence it was a socialist state. In 1990, Mongolia undertook a transition from socialism and a centrally-planned economy to a democracy and free-market state.¹²²⁾ In 1992 it adopted a new constitution. US and German international aid bodies assisted with legal training, and therefore these legal systems have influenced the development of the Mongolian system, which can best be described as a civil law system influenced by Soviet and Romano-Germanic law.¹²³⁾

118) Janine Pascoe, "Corporate Law Reform and Some 'Rule of Law' issues in Malaysia" (2008) 38 *Hong Kong Law Journal* 769.

119) *Micronesia, Federated States of* (4 November 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>>.

120) Brian Z Tamanaha, 'Looking at Micronesia for Insights about the Nature of Law and Legal Thinking' (1993) 41(1) *The American Journal of Comparative Law* 9.

121) Jean G Zorn, 'The Federated States of Micronesia,' in Ntuny (ed) *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993), p 510.

122) Sebastian R Astrada, 'Exporting the rule of law to Mongolia: post-socialist legal and judicial reforms', (2010) 38(3) *Denver Journal of International Law and Policy* 461, pp 461-2.

123) Id., pp 483-4; *Mongolia* (4 November 2013) World Fact Book < <https://www.cia>.

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u. Nauru

- 1) Nauru's legal system comprises a mixed legal system of common law based on the English model, and customary law.¹²⁴⁾

v. Nepal

- 1) Nepal was never subject to colonial rule.¹²⁵⁾ Its modern legal system dates back to 1854 when the *Muluki Ain* was decreed, it being the first comprehensive legal code, inspired by the French Civil Code. The Nepalese legal system has its roots in both English common law and Hindu legal concepts,¹²⁶⁾ and its recent codification combines its customary, Hindu and English law principles.¹²⁷⁾
- 2) Commercial transactions are governed by special rules to be found in codes and specific legislation.¹²⁸⁾ The 2000 Nepal Contract Act is said to "represent, no doubt, a significant improvement over Nepal's previous contract law...[which contained] contradictions and redundancies... including lack of basic contract rules and coverage".¹²⁹⁾

w. New Zealand

- 1) New Zealand was a colony of Britain since 1840. Its legal system still largely reflects English common law, with Maori custom and rights in-

gov/library/publications/the-world-factbook/geos/mg.html>.

124) *Nauru* (4 November 2013) World Fact Book < <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html>>.

125) USAid, *Nepal Rule of Law Assessment*, (2009) US Agency for International Development, p. 2.

126) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 51 (November 2007) Nepal, 'Nepalese Legal Family', pp 19-21; *Nepal* (31 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>>.

127) Wolters Kluwer, above n 127.

128) *Id.*, p. 22.

129) *Id.*, p. 93.

fluencing laws on some issues, such as customary title and the rights of children.¹³⁰⁾

- 2) Judicial decisions are increasingly reflecting Australian and Canadian trends, and New Zealand courts are slowly developing their own jurisdiction,¹³¹⁾ sometimes in quite novel and innovative ways.

x. *Palau*

- 1) Palau is one of the world's smallest and newest nations.¹³²⁾ As such, it is "a small nation using its legal system to foster economic development through foreign investment while simultaneously preserving its cultural and economic heritage from domination by foreign interests."¹³³⁾
- 2) Its legal system is mostly a common law system, however Palau has been governed by Spain, Germany, Japan and the USA,¹³⁴⁾ and so it has a mixture of civil, common and customary law.¹³⁵⁾
- 3) Its constitution bears a similarity to the US constitution,¹³⁶⁾ and during independence it chose to adopt US law as applicable whenever a gap exists in statutory or customary law.¹³⁷⁾ Palau was a de facto state of the USA for some time, and so despite having independence, is still reliant upon the US as a source of law and legal professionals.¹³⁸⁾ Nevertheless, Palau's courts have developed some jurisprudence of their

130) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 65 (April 2011) New Zealand, 'General Introduction', p. 24.

131) *Id.*, pp 23 - 25.

132) Colin PA Jones, 'Law and Investment in Palau: A Brief Overview for Prospective Foreign Investors' (2007) 17 *Indiana International and Comparative Law Review* 49.

133) *Id.*, p. 50.

134) *Id.*, p. 51-2.

135) *Palau* (4 November 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/ps.html>>.

136) Jones, above n 132, p. 53.

137) *Id.*

138) *Id.*, p. 54.

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own, rather than simply following US case law.¹³⁹⁾

z. Papua New Guinea

- 1) Papua New Guinea (PNG) gained its independence from Australia in 1975. It has been a common law system since WWII. The received body of common law survives its new constitution, insofar as it does not conflict with any constitutional law, custom or statute.¹⁴⁰⁾ PNG is also seeking to develop its own customary law, known as the Underlying Law, which is given effect with the *Underlying Law Act* 2000.
- 2) Contract and commercial law in PNG mainly consists of English principles of common law and equity.¹⁴¹⁾ As there have been few developments in PNG Underlying Law, the English common law principles are still dominant.¹⁴²⁾ An under-developed legal infrastructure, political interference and turmoil, as well as high crime rates, all contribute to difficulties in the development of the economy and financial markets, limiting foreign investment in PNG.¹⁴³⁾

aa. Philippines

- 1) The Philippines is a former Spanish colony which has been independent since 1898, but was later occupied by the US between late 19th century to mid-20th century.¹⁴⁴⁾ The Spanish Civil Code was in force in the

139) Id., p. 55.

140) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 42 (June 2005) Papua New Guinea, 'General Introduction', p. 20.

141) John Nonggorr, 'Papua New Guinea' in Ntummy (ed), *South Pacific Islands Legal Systems*, (University of Hawaii Press, 1993), 202, p. 245.

142) Wolters Kluwer, above n 140, p. 25.

143) Asian Development Bank, *Foundation for the Future*, ADB Report, 2008.

144) Wolters Kluwer, *International Legal Encyclopaedia - Constitutional Law*, 87 (September 2010) Philippines, 'General Introduction', p. 15.

Philippines for an extended period from 1889,¹⁴⁵⁾ and the 1949 Civil Code of the Philippines retains a strong Roman Catholic flavour.¹⁴⁶⁾ American common law largely influences public law, partnerships and corporations law, and intellectual property law.¹⁴⁷⁾

- 2) The Philippines has a mixed legal system of civil, common, Islamic and customary law. It has been said that “[t]he Philippine legal system is a blend of Roman (civil law) and Anglo-American (common law) systems and indigenous customary rules. The civil law chiefly regulates family relations, property, success, contract and criminal law while statutes and principles of common law origin have been adopted in constitutional law, commercial law, taxation and labour relations, and civil and criminal procedure. In some parts of Mindanao, Islamic law is observed.”¹⁴⁸⁾ Thus, although the Philippines is largely Roman Catholic, in certain parts of the Philippines, Islamic law influences the law of contract.¹⁴⁹⁾

bb. Samoa

- 1) The Independent State of Samoa was admitted to the United Nations on 15 December 1976, after becoming independent from New Zealand in 1962.
- 2) Samoa has a mixed legal system of English common law and customary law.¹⁵⁰⁾ However, “[f]rom a business law standpoint, the commercial legal framework is a mixture of severely outdated legislation (some of which dates back to the beginning of the 20th century) and new legis-

145) Elizabeth Aguilin-Pangalangan, ‘The Philippines’ in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptions and Innovations* (Cambridge, 2011) p. 373.

146) *Id.*, p. 377.

147) *Id.*, p. 374.

148) Wolters Kluwer, above n 144, p. 15.

149) Aguilin-Pangalangan, above n 145.

150) Asian Development Bank, *Samoa: Consolidating Reform for Faster Economic Growth, ADB - Country Planning Report*, ADB, June 2008, pp. 34-5.

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lation that reflects modern business law. Some important gaps exist (e.g. in the areas of arbitration and electronic transactions).”¹⁵¹⁾ A problem of uncertainty also arises in Samoa, in that Samoan courts are free to choose between the common law as developed throughout the common law world, not simply England.¹⁵²⁾ The doctrine of consideration applies to contracts.¹⁵³⁾

- 3) Nevertheless, some initiatives have been undertaken in Samoa in recent times. These have attempted to modernize the commercial law of Samoa.¹⁵⁴⁾ Although the Samoan Sale of Goods Act was adopted in 1975,¹⁵⁵⁾ the new Samoan 2006 Companies Act was modelled on the New Zealand Act.¹⁵⁶⁾

cc. Singapore

- 1) Singapore is a former British colony, but became independent in 1965. While English law still forms the basis of the Singaporean legal system, it has sought to develop its own legal culture and jurisprudence.¹⁵⁷⁾ Nonetheless, appeals to the English Privy Council still existed up until 1994.¹⁵⁸⁾ Even under British rule, judges were permitted to apply native customary law to matters of “personal law”.¹⁵⁹⁾ A distinctive feature of “the Singaporean elite’s conception of law and the legal system” is a

151) Id.

152) Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law*, (Palgrave, 3rd ed, 2011), p. 203.

153) Id., p. 211.

154) Asian Development Bank, above n 150.

155) Corrin and Paterson, above n 152, p. 210.

156) Asian Development Bank, above n 150, p. 35.

157) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 74 (November 2012) Singapore, ‘General Introduction’, pp 35 - 36

158) Id., p. 59; Kevin YL Tan, ‘Singapore’ in Black and Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptions and Innovations*, (Cambridge, 2011), p. 338.

159) Daniels et al, above n 41, p. 136.

“communitarian-based understanding” of the rights of individuals in relation to society.¹⁶⁰⁾ Through the state’s control of firms, it has been estimated that the state controls up to 60% of GDP.¹⁶¹⁾

- 2) The Singapore Civil Code is in English.¹⁶²⁾ Although developments in English common law since 1826 do not apply to Singapore, unless accepted as part of Singapore law by Singapore courts, the Application of English Law Act (Cap 7A) 1993 declares that the common law of England is applicable as part of Singapore law before 12 November 1993 still continues to apply.¹⁶³⁾ Singapore courts follow the *stare decisis* rule of binding precedent.¹⁶⁴⁾ Domestic contract law is very similar to that in England. The CISG was enacted in Singapore via the Sale of Goods (United Nations Convention) Act.¹⁶⁵⁾

dd. Solomon Islands

- 1) The Solomon Islands was a British colony prior to 1978. Its legal system contains both English common law and customary law,¹⁶⁶⁾ due to its well-established system of customary law prior to colonization. However, it has been suggested that this form of legal pluralism may not be working well, and is presently aggravated by a lack of activity

160) Eugene KB Tan, ‘Harmony as Ideology, Culture and Control: Alternative Dispute Resolution in Singapore’ (2007) 9 *Australian Journal of Asian Law* 120, p. 130.

161) *Id.* p. 330.

162) Bell, above n 62.

163) Kevin YL Tan, above n 160, p. 337 (s. 3(1)). There is a proviso that the common law continues “so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require”: s. 3(2).

164) *Id.*, p. 338.

165) Wolters Kluwer, above n 157, pp 63 - 64.

166) Jennifer Corrin, ‘Breaking the Mould: Constitutional Review in Solomon Islands’ (2007) *Revue Juridiqu Polynésienne* 143. See also John Nonggorr, ‘Solomon Islands’ in Ntummy (ed) *South Pacific Islands Legal Systems* (University of Hawaii Press, 1993), p 268.

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in generating law specifically designed for the Solomons.¹⁶⁷⁾

- 2) Uncertainty arises through the requirement that received English legislation must be of “general application” and be “compatible” with the Solomons’ constitution.¹⁶⁸⁾ Further ambiguity arises regarding cut-off dates for English decisions regarding their relevance for Solomons’ courts¹⁶⁹⁾ Lack of accountability and corruption infringes upon commercial and legal development.¹⁷⁰⁾

ee. Sri Lanka

- 1) Sri Lanka’s legal system has been influenced by and contains laws from English, Roman-Dutch laws, and from Sri Lankan indigenous (Jaffna Tamil) customary law.¹⁷¹⁾
- 2) In Sri Lanka, contracts are also governed by laws derived from these backgrounds, with the largest influence in contract law being English law,¹⁷²⁾ due to the Civil Law Ordinance which “introduces the law of England in maritime and commercial matters unless there is contrary statutory provision in Sri Lanka”.¹⁷³⁾ The Sri Lankan Sale of Goods Ordinance is also based on English law.¹⁷⁴⁾

167) *Id.*, pp 144, 153. See also, Craig Forrest and Jennifer Corrin, ‘Legal Pluralism in the Pacific: Solomon Island’s World War II Heritage,’ (2013) 20 *International Journal of Cultural Property* 1, p. 2.

168) *Id.*, p. 154.

169) *Id.*, p. 155.

170) Clark Colin and Ken Levy, ‘Improving accountability in the Solomon Islands: a review of auditor-general enabling legislation’, (2012) 20(1) *Asia Pacific Law Review* 45.

171) Aruna Samarajewa, ‘A New Model Contract Law for E-commerce in Sri Lanka’ (2005) 7(1) *Australian Journal of Asian Law* 95, p. 99; *Sri Lanka* (4 November 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>>.

172) *Id.*

173) *Id.*, p. 99 (citing CG Weeramantry, *The Law of Contracts* (1999, Lawman (India)).

174) *Id.*, p. 101.

ff. Thailand

- 1) In the Kingdom of Thailand, “the Thai constitution has never been the true basis of the political or moral legitimacy of the exercise of state authority”.¹⁷⁵⁾ Thailand has tended to suffer from periodic political upheaval, with a coup and new constitution in 1991. The election of 2001 was considered its most open and corruption-free election since adopting a new 1997 constitution, however, electoral corruption and violence broke out again in 2005. This was followed by another coup in 2006. Another political crisis broke out, and there was civil unrest from 2008-2010, resulting in further upheaval. As a consequence, Thailand suffers from high levels of poverty and adverse working conditions.¹⁷⁶⁾
- 2) Due to colonization, Thai law is largely influenced by the civil law family, however it also contains some features demonstrating common law influences.¹⁷⁷⁾ Although these Western influences predominate, Thai law also contains some traditional customary law and Islamic law,¹⁷⁸⁾ though it is largely a Buddhist nation.¹⁷⁹⁾

gg. Timor-Lest

- 1) Timor-Lest has a civil law system based on the Portuguese model, remaining from its former status as part of Indonesia.¹⁸⁰⁾ Given the relevant recent conflict in Timor-Lest, there has been a focus on transitional

175) Ted L McDorman, ‘Constitution Change and Continuity in Thailand in the Aftermath of the 1991 Coup’ in Johnston and Ferguson (eds) *Asia-Pacific Legal Development* (UBC 1998), pp 218-19.

176) Id.

177) Sommanat Juaseekoon, ‘Developments of Legal System in Thailand’ 10th General Assembly ASEAN Law Association (Hanoi, 2009).

178) Id.

179) Andrew J Pirie, Alternative Dispute Resolution in Thailand and Cambodia, in Johnston and Ferguson (eds) *Asia-Pacific Legal Development* (UBC 1998), p. 529.

180) *Timor-Leste* (25 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>>.

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programs, reconciliation, disarmament and demobilization. This has been achieved with the help of the United Nations Mission in Support of East Timor.¹⁸¹⁾

- 2) Naturally the emphasis is on rehabilitating infrastructure (including roads, water supply, and other basic services) with the help of the ADB, but there is also the obvious need to improve economic regulation and financial management.¹⁸²⁾
- 3) Penal and civil law codes to replace the Indonesian codes were passed by the Timor-Lest parliament in 2009 and 2011.

hh. Tonga

- 1) Tonga is a former Australian colony. Other than its constitution and any Tongan statutes, English law (including common law and statutes) is generally applied in Tonga,¹⁸³⁾ pursuant to the Civil Law Act.¹⁸⁴⁾ In the area of private international law, English law is applied,¹⁸⁵⁾ and Tongan corporate law is largely a codification of English law.¹⁸⁶⁾ Tongan Courts heavily follow the English court decisions, and are greatly influenced by court decisions from Australia and New Zealand.¹⁸⁷⁾
- 2) The requirement of consideration applies to contracts,¹⁸⁸⁾ and, in keeping with the current English position (as opposed to the Australian stance) Tongan courts have held estoppel may only be used as a defence, not as a cause of action.¹⁸⁹⁾

181) Asian Development Bank, *Country Strategy and Program Update 2006-2008, Democratic Republic of Timor-Leste* - ADB Report (2005)

182) *Id.*

183) Wolters Kluwer, *International Legal Encyclopaedia - Corporations and Partnerships*, 60 (August 2011) Tonga, 'The General Background of the Territory' p. 25.

184) *Id.*, p. 25.

185) *Id.*, p. 27.

186) *Id.*, p. 28.

187) *Id.*

188) Corrin and Paterson, above n 65, p. 211.

ii. Tuvalu

- 1) The former English colony of Tuvalu has an English common law legal system, mixed with local customary law.¹⁹⁰⁾ It gained independence only in 1978, and recognizes customary law in its constitution.¹⁹¹⁾ Its Sale of Goods Act was adopted in 1991.¹⁹²⁾ International treaties must be enacted before they carry the force of law in Tuvalu.¹⁹³⁾

jj. Vanuatu

- 1) Vanuatu is a former English colony and applies English law, mixed with French civil law and local customary law.¹⁹⁴⁾ Before its independence in 1980, by Convention English law applied to English citizens and those who opted for it to apply, while French law applied to French citizens and those who opted for it.¹⁹⁵⁾ After independence, the constitution provided that both British and French laws which applied immediately before would continue to be in force, and that customary law would also continue to apply.¹⁹⁶⁾
- 2) The Asian Development Bank describes recent Vanuatu legal reforms as involving “[a]n extensive commercial legal reform program. The government has passed a new personal property securities law and is close to having the supporting electronic registry in place. It is engaged

189) *Id.*, p. 213.

190) Corrin, above n 166, pp 145, 160.

191) Sue Farran, ‘Is Legal Pluralism an Obstacle to Human Rights? Considerations from the South Pacific’ (2006) 52 *Journal of Legal Pluralism* 77, pp 79, 81.

192) Corrin and Paterson, above n 65, p. 210.

193) Farran, above n 191, p. 82.

194) Wolters Kluwer, *Internationa lLegal Encyclopaedia - Private International Law*, 25 (April 2010); *Vanuatu* (25 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/la.html>>.

195) Farran, above n 191, p. 82.

196) *Id.*, pp 83-84.

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in extensive reform of the laws governing business, including the Companies Act, the Trustee Act, and the bankruptcy framework. Once completed, these initiatives will result in Vanuatu having a modern commercial legal framework that is tailored to the needs of the country and the structure of business transactions.”¹⁹⁷⁾ In 2006 the new Civil Code of Viet Nam came into force.¹⁹⁸⁾

- 3) The approach of Vanuatu toward treaties is unclear, but seems to favour the incorporation of treaties into domestic law.¹⁹⁹⁾

kk. Viet Nam

- 1) The Socialist Republic of Viet Nam’s legal system is a civil law legal system,²⁰⁰⁾ with a civil code passed in 2005 reflecting a European civil code.²⁰¹⁾ French influences are still evident in Vietnamese contract law today, but the civil law of Viet Nam has also been strongly influenced by socialist law from Russia and China.²⁰²⁾
- 2) Vietnamese law has also been influenced by German law, and in the 1980s held drafting Committees under the Ministry of Justice to examine laws from East Germany, Japan, Russia, Poland Czechoslovakia, Hungary, China, France, West Germany, Canada, for inspiration; and took advice from experts from East Germany, France, Russia and Japan.²⁰³⁾ Indeed, it has been argued that Vietnamese reformers are plu-

197) Asian Development Bank, *Vanuatu: Country Partnership Strategy (2010-2014) ADB - Report Draft for Consultation*, ADB Report, August 2009

198) Kitagawa, above n 51, p. 255.

199) Farran, above n 191, p. 86.

200) Wolters Kluwer, *International Legal Encyclopaedia - Contracts*, 70 (March 2012) Vietnam, ‘General Introduction’ p 25.

201) *Vietnam* (25 October 2013) World Fact Book <<https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html>>.

202) Wolters Kluwer, above n 200.

203) Le Net, *Contract Law in Vietnam*, (Wolters Kluwer, 2012), p. 39.

realists, and that “Vietnamese theorists worry little about the identity of Vietnamese law. They will adapt any laws, with appropriate modification, as long as they are suitable to the socio-economic situation of the country.”²⁰⁴⁾ Further, characterisation of the Vietnamese legal system is said to be complicated due to its long history of wars, political system and multiple foreign influences.²⁰⁵⁾

- 3) The law in Viet Nam does not recognize rights in the nature of floating charges or pledges, and while land-use rights can be traded, land itself cannot be sold.²⁰⁶⁾
- 4) Contracts are divided into civil contracts and commercial contracts are governed by the OEC 1989, civil contracts by the Civil Code 2006.
- 5) International contracts fall within Part 7 Civil Code 2006, which contains international private law. It ensures that any treaty to which Viet Nam is a party prevails over conflicting provisions of the Civil Code.²⁰⁷⁾ Soft laws or contract terms such as UCP600 for documentary credits, or ISDA for swaps and derivatives are widely recognized.²⁰⁸⁾ Unidroit Principles of International Commercial Contracts are also said to be influential in Viet Nam.²⁰⁹⁾
- 6) Contract law in Viet Nam upholds the principles of freedom of contract and good faith, and there is no requirement of consideration or causa.²¹⁰⁾

204) Id., p. 26. See also p. 39.

205) Wolters Kluwer, above n 200.

206) Net, above n 203.

207) Id., p. 35.

208) Id., p. 35.

209) Id.

210) Id., pp 40, 47.

D. Conclusion

There is a huge array of systems and influences throughout Asia and the Pacific. It would be difficult to imagine a more eclectic collection of mixtures. The diversity apparent throughout makes the case for adopting an efficient, uniform sales law throughout the region much stronger.

III. Examination of Adoption of CISG within Asia Pacific and the Pacific and Its Implementation

A. Introduction

This chapter examines how many countries in the Asia Pacific have joined the CISG and which have not. It follows with a discussion of some reasons that may explain why the CISG has been adopted in some countries but not in others of the same region.

B. CISG Accession in the Region

Table 3.1 below illustrates which UN recognized states in the Asia Pacific region have adopted the CISG and when they ratified it.

In summary, of the 36 Asian Pacific states shown below, only seven have ratified the CISG. China (1986) and Australia (1988) both joined early on; they were followed by Singapore (1997), Mongolia (1997) and New Zealand (1998); and then the most recent accessions by South Korea (2004) and Japan (2008).

Table 3.1.

Asia Pacific Countries ²¹¹⁾	Acceded to CISG ²¹²⁾	Date
1. Australia	Yes	17 March 1988
2. Bangladesh		
3. Bhutan		
4. Brunei Darussalam		
5. Myanmar (Burma)		
6. Cambodia		
7. China	Yes	11 December 1986
8. Fiji		
9. India		

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Asia Pacific Countries ²¹¹⁾	Acceded to CISG ²¹²⁾	Date
10. Indonesia		
11. Japan	Yes	1 Jul 2008
12. Kiribati		
13. Korea, North (DPRK)		
14. Korea, South (ROK)	Yes	17 Feb 2004
15. Lao PDR (Lao)		
16. Malaysia		
17. Marshall Islands		
18. Micronesia, Federated States of		
19. Mongolia	Yes	31 Dec 1997
20. Nauru		
21. Nepal		
22. New Zealand	Yes	28 January 1998
23. Pakistan		
24. Palau		
25. Papua New Guinea		
26. Philippines		
27. Samoa		
28. Singapore	Yes	16 Feb 1995
29. Solomon Islands		
30. Sri Lanka		
31. Thailand		
32. Timor-Lest		
33. Tonga		
34. Tuvalu		
35. Vanuatu		
36. Viet Nam		

211) List taken from the World Fact Book. For East and South East Asia: <https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_eas.html>; South Asia: <https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_sas.html>; and Australia/Oceania <https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_au.html>. For the purposes of this report, Iran and Afghanistan have been excluded due to regional proximity as has Taiwan due to limited UN recognition.

212) United Nations Treaty Series <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en>

C. Countries in the Region that may Adopt CISG in the Near Future

It seems likely, given discussions occurring within the respective countries, that further ratifications will occur in the mid to near future. Of the non-member states, the most likely to accede next appears to be Viet Nam, which has been considering the matter for some time. Interest in the CISG appears also to be gathering momentum in the Philippines. There have also been calls for Nepal to join the CISG.²¹³⁾ It could perhaps also be a possibility on a more distant horizon for Malaysia, Indonesia, and Myanmar, which has recently joined the New York Convention.²¹⁴⁾

Presently, the Philippines does not have accession to CISG on the government agenda. However, it is clear that there is much interest amongst the certain Filipino Department of Justice, Department of Trade and Industry, and Department of Foreign Affairs staff following a recent Workshop held in the Philippines on the CISG (October 2013), and it is envisaged developments at an official level will begin shortly.²¹⁵⁾

In Viet Nam, the internal government procedures in preparation for accession by Viet Nam are presently underway, and it is possible that these will be completed by the end of 2013.²¹⁶⁾ While such processes often take longer than anticipated, it seems the position of the Vietnamese government is very positive.

213) Above n 125.

214) *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959).

215) Manila Workshop, 18 October 2013 (Ben Hayward email correspondence with author).

216) Mr Pham Dinh Thuong, Vice-Director, Legal Department, Ministry of Industry and Commerce, Viet Nam, Presentation, Manila Workshop, above n 215.

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One of the reasons for Myanmar's accession to the New York Convention, and the reason to believe it may possibly become interested in also joining the CISG, is the technical assistance it receives from the Japanese International Cooperation Agency (JICA). Other bodies which lend technical assistance in the region are: Asian Development Bank (ADB), International Monetary Fund (IMF), World Bank, AusAID, USAid, and others. The positive impact of legal infrastructure programs that assist such countries to further engage in international trade should not be underestimated. This is further discussed below.

D. Geographic Momentum

The number of states acceding to the CISG in a region may gather increasing pace due to the accession of key regional trading nations. There may be reason to conclude that the recent accessions of Japan (2008) and South Korea (2004) could have such influence, especially given the rise of the importance of China (1986) as a worldwide trading powerhouse. The possibility of such an influence - the "geography hypothesis" - is further explored in Chapter VI.

E. Problems in Acceding to CISG

a. CISG in Islamic States

- 1) It has been argued that there are concepts within the CISG that run counter to Islamic law principles. This may be a contributing factor for certain countries in the Asia Pacific region when deciding to adopt the CISG or not. These could include Bangladesh, Indonesia (the largest Muslim majority country in the world),²¹⁷ Malaysia, Brunei, and to a

217) Gary Bell, 'Indonesia: The Challenges of Legal Diversity and Law Reform' in *Law*

lesser extent, the Philippines and Thailand.

- 2) Gary Bell, writing about the CISG in Asia, has commented how the Islamic law does not seem to be taken into account at all by the CISG.²¹⁸⁾ He states: “[a] contractual provision which provides for interest to be paid could be held invalid in an Islamic country through art. 4(a) CISG, but a country could not prevent the application of art. 78 CISG (interest on damages)-it is not one of the reservations allowed under the CISG. It is therefore unlikely that the CISG will be adopted by countries that profess to base their legal system on Islamic law.” However, not all authors agree, and some argue that Art. 78 would be enforceable in Islamic countries.²¹⁹⁾
- 3) However, interest is not the only potential concern regarding the CISG in Islamic states. Bell notes differences between the approaches taken towards dealing with international sales depending on which schools of Islamic law prevail in the particular country concerned. For example, while it is “not without controversy” that the “Shafi’i school dominant in all of Southeast Asia [] including Malaysia, Singapore and Indonesia” accepts the arrangement in Islamic financing known as the *murabaha*, whereby the “Islamic bank actually buys the goods for a price and re-sells them to its client for a higher price payable through fixed...instalments”.²²⁰⁾ Nevertheless, Bell’s also considers that the *murabaha* is not compatible with the CISG.²²¹⁾

and Legal Institutions of Asia: Traditions, Adaptations and Innovations, Black and Bell (eds), (Cambridge, 2011)

218) Bell, above n 82, 363.

219) TC Twibell, ‘Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) under Shari’a Law: Will Article 78 of the CISG Be Enforced When the Forum Is an Islamic State?’ (1997) 9 *International Legal Perspectives* 25.

220) Gary Bell, above n 81, at p. 13.

221) Id.

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4) This issue was recently considered by the CISG Advisory Council. In its Opinion No 14, it will recommend the most appropriate manner for interpretation of Art. 78,²²²⁾ and it is anticipated that should, at least in part, deal with one of the chief concerns of Islamic countries in joining the CISG.

b. Less Developed States

- 1) A decision not to adopt the CISG could also be simply due to a lack of resources. Countries in which there is a severe lack of resources, poverty, political or industrial turmoil, or war will seldom have the required stability to allow focus on development of legal infrastructure in relation to international contract law.
- 2) Furthermore, even where there is a desire to undertake reform or consider adoption of uniform texts including the CISG, a lack of resources may mean that there is insufficient legal expertise and training to do so. Assistance by way of resources in technical training and capacity building, implementation assistance and drafting advice is often the key to enabling adoption of harmonized texts and domestic reforms that could help build trade in developing nations.
- 3) This is true of nations affected by war, civil and political upheaval such as Burma/Myanmar, Cambodia and Timor-Leste, and of Bangladesh where an estimated 3-4% per annum of GDP is lost due to hartals or strikes.²²³⁾ Similarly, in Papua New Guinea, there is great difficulty in the development of legal structure due to political interference and turmoil, and these matters (combined with a high crime rate) contribute to the lack of economic development.²²⁴⁾

222) To be published as CISG Advisory Council, Opinion No 14, Rapporteur Prof Yesim Atamer, Comments.

223) Asian Development Bank, above n 21, p. 2.

224) Asian Development Bank, above n 143, p. 3.

- 4) In many less-developed nations, legal training is in short supply. For example, in Bhutan in 2001, the only person in the country with any Western legal training was the Chief Justice.²²⁵⁾ Initiatives aimed at capacity building in regard to international commercial law and dispute resolution are sometimes funded by aid programs. For example, there have been such efforts by Australia in the Philippines,²²⁶⁾ and other initiatives by Canada in Thailand that aim at building capacity in dispute resolution.²²⁷⁾
- 5) The importance of financial and practical assistance cannot be underestimated. Donor institutions and intergovernmental funding efforts are taking place in some countries to tackle basic problems such as corruption. Corruption affects many nations in the Asia Pacific regions. This is particularly true of the Pacific, where corruption continues to beset countries such as the Solomon Islands²²⁸⁾ and Papua New Guinea.²²⁹⁾ This demonstrates the importance of programs that seek to reduce corruption and strengthen accountability, such as the efforts of the ADB, (funded by the ADB and various governments, EU, Danish and UK governments in Bangladesh)²³⁰⁾ These programs allow for the establishment of defined organizational frameworks and structures which is essential for the creation and enforcement of laws (for example, in Cambodia)²³¹⁾ This is often a fundamental step for the adoption and implementation of laws that provide the basic framework for a modernized

225) Simoni and Whitecross, above n 25, p. 179.

226) Such programs include a capacity building program, led by Prof Jeff Waincymer, Monash University, which was previously funded through AusAID.

227) Pirie, above n 179, p. 529.

228) Colin and Levy, above n 170, pp 45-62.

229) Asian Development Bank, above n 143, p 3.

230) See for example, programs in Bangladesh, Asian Development Bank, above n 21, p. 37.

231) See for example, programs in Cambodia, Niazi, above n 46. See also the IMF's corporate governance program in Indonesia, Mahy, above n 83, p. 414.

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and secure trading environment that will in turn improve local and regional economies. Also in Indonesia, the IMF has led to reforms including in relation to corporate governance.²³²⁾

- 6) The role of the level of legal development and the speed with which CISG accession takes place in a region is further considered in Chapter 6.

c. Cultural and Legal Cultural Blocks to Adoption

- 1) However, external assistance is not a panacea. Local cultural influences must always be recalled. In Bhutan, legal transplants of judicial reform and democracy have been variously promoted by the World Bank, UN, Danish government or the EU, and even the American Bar Association. Yet these reforms have followed new, softer paths, due to concerns about the negative effects of globalization on a traditionally isolated state such as Bhutan. These concerns are addressed by filtering the changes through the concept of Gross National Happiness.²³³⁾
- 2) There can be other general and specific blocks to adoption of CISG or any other uniform law. For example, Brunei did not adopt the Model Law on International Commercial Arbitration²³⁴⁾ because England did not do so (Brunei Darassalam law is close to that of England as it a former British colony).²³⁵⁾ Furthermore, Brunei society, including financial and commercial administration, is becoming increasingly Islamised.²³⁶⁾
- 3) The strong connection with English law might be a factor relating to the adoption of the CISG not only for Brunei, but also India, another former English colony which has not yet acceded to the CISG. Sri

232) Mahy, above n 83, p. 414.

233) Simoni and Whitecross, above n 25, p. 166.

234) UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted by UNCITRAL in 2006).

235) Black, above n 33, text at fn 41.

236) *Id.*, at 80.

Lanka is another country heavily influenced by English law,²³⁷⁾ and as such may be influenced by similar reasoning.

- 4) However, the English connection is not always a stumbling block. Certainly, Australia and New Zealand both became CISG member states, as did Singapore, which has also been heavily influenced by English law.

d. Technical Obstructions

- 1) The applicability of the CISG is sometimes subject to a more complex process than the simple decision by a nations' government to accede. For example, although the applicability of the CISG to Hong Kong and Macau, as SAR's of the CISG member state of PR China is disputed by some, most consider that it does not apply on the basis of an analysis of a series of potentially relevant declaratory instruments.²³⁸⁾ It seems likely that PR China government would need to deposit specific declarations with the UN to implement the CISG in these SARs, no doubt after, at a practical level.

F. Counter Argument - the Whole Package

An argument that may hold sway in many of these situations is that CISG should be accepted as part of an integrated package designed to facilitate trade and develop laws both at international and domestic level. That package really covers the gamut of dispute resolution, enforcement of arbitral awards,

237)Samarajewa, above n 171, pp. 99-101.

238) For example, refer to the discussions by Ulrich G Schroeter, 'The Status of Hong Kong and Maco under the United Nations Convention on Contracts for the International Sale of Goods' (2004) 16 *Pace International Law Review* 307; Long, above n 59; Fan Yang 'Hong Kong's Adoption of the CISG: Why do we need it now?' in Schwenzer and Spagnolo (eds) *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference* (Eleven International Publishing, 2011).

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sale of goods and electronic commerce, and can be integrated with domestic arbitration law and domestic contract law. It includes a range of instruments, from the New York Convention on the Recognition and Enforcement of Arbitral Awards²³⁹⁾ the UNCITRAL Model Law on International Commercial Arbitration,²⁴⁰⁾ CISG, UNCITRAL Model Law on Electronic Signatures,²⁴¹⁾ UNCITRAL Model Law on Electronic Commerce,²⁴²⁾ and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts²⁴³⁾ (it may even include the less frequently adopted United Nations Convention on Limitation Periods).²⁴⁴⁾

For some countries, the need to provide an attractive and widely accepted enforcement mechanism (such as arbitration) due to perceived inadequacy of their own court process (and/or corruption problems) might be the key inducement to adopt such a package. For others, the need to address the growing and now omnipresent online contracting issue may be the influencing factor.²⁴⁵⁾

Such a package can be seen as allowing the nation to improve its legal infrastructure to ensure it is an attractive trading partner. It can also provide a basis for the modernization and internationalization of its domestic law, especially where those laws are antiquated, too complex, or could benefit from internationalization – thus making them more uniform with the laws in oth-

239) Above n 214.

240) Above n 234.

241) UNCITRAL Model Law on Electronic Signatures (as adopted by UNCITRAL 2001).

242) UNCITRAL Model Law on Electronic Commerce (as adopted by UNCITRAL 1998).

243) *United Nations Convention on the Use of Electronic Communications in International Contracts*, opened for signature 16 January 2006, Doc. A/60/515 (entered into force 1 March 2013)

244) *Convention on the Limitation Period in the International Sale of Goods*, opened for signature 11 April 1980, 1511 UNTS 3 (entered into force 1 August 1988).

245) See, for example, the call for Sri Lanka to adopt the UNCITRAL Model Law on Electronic Commerce, Samarajewa, above n 171.

er jurisdictions that are key trading partners (e.g. China) and with the predominant international trade regime. The CISG, as part of this package, helps integrate a blend of common and civil law principles - something that many nations in the Asia Pacific region may appreciate.²⁴⁶⁾

G. Exclusion of CISG by Parties after Accession by the State

The CISG may already bring economic advantages for trade in the Asia Pacific. These are explored further in Chapter V. It may also improve the efficiency of transactions for individual contracting parties, a question discussed in Chapter IV. However, the extent to which it does so is largely determined by the rate with which the CISG is used as the law of international sales by transacting parties.

Formal adoption of the CISG is not the end of the story for harmonization of sales law. Parties are free, pursuant to Art 6 CISG, to opt out of its application to their contract. Statistical studies in various jurisdictions show that the CISG is excluded in varying degrees in different jurisdictions by lawyers drafting choice of law clauses. In brief, it seems:

- No full scale study on exclusions presently exists in relation to Asia Pacific. However, studies elsewhere have found:²⁴⁷⁾
- Between 55-71% of US lawyers ‘typically/generally’ opt out;²⁴⁸⁾

246) See also Bell, above n 82.

247) Section G is extracted from Lisa Spagnolo, *The Efficiency, Use and Interpretation of the Vienna Convention for Contracts on the International Sale of Goods*, (Monash University, Dissertation [Doctor of Philosophy] submitted 2012), chapters 6 and 7, pp. 160-161, 220-225 to be published as *CISG Exclusion and Legal Efficiency* (Kluwer, 2014 forthcoming).

248) See Appendix 2 for details of confidence levels. Studies found: 55% (1), 61% (2) and 71% (3). (1) Peter L Fitzgerald, ‘The International Contracting Practices Survey Project’ (2008) 27 *Journal of Law and Commerce* 1, 67, Question 11 (2006-2007, sample size of 47); (2) George V Philippopoulos, ‘Awareness of the CISG Among American

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- Approximately 45% of German lawyers ‘generally/predominantly’ opt out;²⁴⁹⁾
- Approximately 41% of Swiss lawyers ‘normally’ opt out;²⁵⁰⁾
- 55% of Austrian lawyers ‘normally’ exclude;²⁵¹⁾ and
- Just 37% of Chinese lawyers surveyed ‘typically’ opt out;²⁵²⁾
- However, for Chinese lawyers surveyed, 64% ‘seldom or never’ opt out,

Attorneys’ (2008) 40 *UCC Law Journal* 357, 361, 363 (2007, sample of 46); Martin F Koehler, ‘Survey regarding the Relevance of the United Nations Convention for the International Sale of Goods (CISG) in Legal Practice and the Exclusion of its Application’ (October 2006) 1, (2004-2005, sample of 48). Not relied upon here: Michael Wallace Gordon, ‘Some Thoughts on the Receptiveness of Contract Rules in the CISG and UNIDROIT Principles as Reflected in One State’s (Florida) Experience of (1) Law School Faculty, (2) Members of the Bar with an International Practice, and (3) Judges’ (1998) 46 (*Suppl*) *American Journal of Comparative Law* 361, 368 (sample size unknown).

249) See Appendix 2 for details of confidence levels. Studies found 45% (1) and 73% (2). (1) Justus Meyer, ‘The CISG in Attorneys’ Every Day Work’ (2009) 6, Question 4, Tables 4A-4C (Appendix 2 further details)(2004, sample of 479 German lawyers); (2) (not relied upon here) Koehler, above n 248; Martin F Koehler and Yujun Guo, ‘Combined Charts (Survey Germany USA China) - Frequency of Exclusion’ (2008) (on file with author).

250) See Appendix 2 for details of confidence levels in applying results to populations of lawyers. Studies found 41% (1) and 62% (2). (1) Meyer, above n 237, 6, Question 4, Tables 4A-4C (Appendix 2 for details)(2007, sample of 393); (2) (not relied upon here) Corinne Widmer and Pascal Hachem, ‘Switzerland’ in Franco Ferrari (ed), *The CISG and Its Impact on National Legal Systems* (Sellier, 2008) 281, 285, 286 (2008, sample of 153).

251) See Appendix 2 for details of confidence levels. Meyer, above n 237, 6, Question 4, Tables 4A-4C (Appendix 2 further details)(2007, sample of 296).

252) Martin F Koehler and Yujun Guo, ‘The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems - An International Comparison of three Surveys on the Exclusion of the CISG’s Application Conducted in the United States, Germany and China’ (2008) 20 *Pace International Law Review* 45 (2007, sample of 27). While this sample only allows a poor level of confidence. - see Appendix 2 - anecdotal observations perhaps indicate an even lower rate: Shiyuan Han, ‘China’ in Franco Ferrari (ed), *The CISG and Its Impact on National Legal Systems* (Sellier, 2008) 71, 71; Joseph Lookofsky, ‘Online with Al K’ in Camilla Baasch Andersen and Ulrich G Schroeter (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H Kritzer on the Occasion of His Eightieth Birthday* (2008) 287, 291; Fan Yang, ‘CISG in China and Beyond’ (2008) 40 *UCC Law Journal* 373, 376.

- compared with just 25% and 29% in Germany and the US respectively;²⁵³⁾ and
- Globally, 13% of lawyers ‘always’ exclude, 32% ‘sometimes’ exclude, while 55% ‘rarely or never’ exclude.²⁵⁴⁾

This author has therefore commented in previous work that this indicates Chinese lawyers use the CISG much more frequently than in other jurisdictions, and up until 2008, “the US can be categorized as occupying one end of the spectrum, that of prevalently ‘blind’ or ‘automatic’ opt-outs from the CISG in practice, and China at the other end, tantamount to being a ‘pro-CISG’ jurisdiction.”²⁵⁵⁾

This author has also concluded that while “no empirical evidence is available yet, anecdotal accounts suggest Canada and Australia are more closely aligned with the American position, and that perhaps the situation in those countries may be even more pronounced than in the US.²⁵⁶⁾ Switzerland, Germany and Austria appear to fall between the two extremes, thus comprising the ‘middle’ category of the exclusion spectrum, with Switzerland being at the lower and Austria at the higher frequency ends.”²⁵⁷⁾

253) See Appendix 2 for confidence levels.

254) Ingeborg Schwenzer, Pascal Hachem and Christopher Kee, *Global Sales and Contract Law* (Oxford University Press, 2012)[5.8], [5.18] & [5.20].

255) Spagnolo, above n 235, Chapter 6, pp 160-161.

256) In Australia, in this author’s experience, and per: David Fairlie, ‘A Commentary on Issues Arising under Articles 1 to 6 of the CISG’, United Nations Commission on International Trade Law and Singapore International Arbitration Centre Joint Conference, ‘Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods’, Singapore, 22 - 23 September 2005, 40 <<http://cisgw3.law.pace.edu/cisg/biblio/fairlie.html>>; Bruno Zeller, *CISG Cases* (2004) <<http://www.business.vu.edu.au/cisg/Cases.htm>>; Luke Nottage, ‘Who’s Afraid of the Vienna Sales Convention (CISG)? A New Zealander’s View from Australia and Japan’ (2005) 36 *Victoria University of Wellington Law Review* 815, 817 n 8, 836 n 113. In Canada: John P McEvoy, ‘Canada’ in Franco Ferrari (ed), *The CISG and its Impact on National Legal Systems* (Sellier, 2008) 33, 33-34.

257) Spagnolo, above n 247, Chapter 6, pp 160-161.

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The global figures of the Global Sales Law Project (GSLP) are difficult to compare with the results of other studies due to differing survey design between studies. However, these reveal quite high levels of participants who prefer the CISG and thus ‘rarely or never’ exclude at 55% globally, compared to previous findings of (at most) 24% for Germany. This result even approaches the 64% of ‘pro-CISG’ China.²⁵⁸⁾ The result might be explained by the jurisdictional composition of the global survey, nevertheless the result still suggests increased CISG use by parties, that is that on a global scale exclusions of the CISG have decreased.²⁵⁹⁾

In regard to US lawyers, a comparison between the US subset for GSLP and the closest survey design of Koehler, in which response categories are clustered, enables us to observe that the proportion of the “population of US lawyers who always/sometimes opt out has moved from 62-79% down to 47-61% from 2004-2009”.²⁶⁰⁾ In all, the data suggests a significant shift away from exclusion of the CISG within the US, confirming other anecdotal evidence of similar shifts in other jurisdictions.²⁶¹⁾

H. Conclusion

The CISG has not yet been adopted by many nations in the Asia Pacific region for a number of reasons, primarily relating to unrelated issues of underdeveloped legal capacity, political upheaval and lack of resources, and possibly due to Islamic legal principles. Furthermore, some parties exclude its application in practice, although this practice seems to be slowly

258) Koehler and Guo, above n 252; Koehler, above n 248. See Appendix 2 for details of confidence levels.

259) Spagnolo, above n 247, chapter 7, pp 220-225.

260) For a full explanation of this analysis, and additional statistical evidence: *Id.* See Appendix 2 for confidence levels.

261) For further discussion of anecdotal and other evidence: *Id.*

decreasing. The report now turns to whether the CISG is an efficient law, and the reasons for exclusion of the CISG in the next chapter.

IV. Efficiency of CISG for Contracting Parties in the Region

A. Introduction

The CISG is a default law. This means that despite its formal adoption by a state the CISG will only apply to a particular transaction if the contracting parties have not chosen to opt out of its application. In this Chapter the efficiency of the CISG for contracting parties is briefly overviewed. Additionally, reasons for exclusion of the CISG are considered. This Chapter is based on earlier work by the author.²⁶²⁾

B. Efficiency of the CISG for Contracting Parties

An analysis of the features of the CISG reveals that they are generally consistent with efficient default rules. This is despite the fact that, arguably, the initial aims in terms of current law and economics theory were relatively vague.²⁶³⁾ At the time of drafting, the purpose of the CISG was said to be the “reduction of transaction costs” for contracting parties engaging in international sales transactions. Its features are, however, specifically designed for international sales, and this design tends to reduce both information asymme-

262) Spagnolo (2012), above n 247. Parts of Chapters 6 and 7 were published as: Lisa Spagnolo, ‘Green Eggs & Ham: The CISG, Path Dependence, and the Behavioural Economics of Lawyers’ Choices of Law in International Sales Contracts’ (2010) 6 *Journal of Private International Law* 417. An earlier version of parts of Chapter 6 was published as Lisa Spagnolo, ‘A Glimpse Through the Kaleidoscope: Choices of Law and the CISG’ (2009) 13 *Vindobona Journal of International Commercial Law and Arbitration* 135. An earlier version of parts of Chapter 7 was published as Lisa Spagnolo, ‘Rats in the Kaleidoscope: Rationality, Irrationality, and the Economics & Psychology of Opting In & Out of the CISG’ (2009) 13 *Vindobona Journal of International Commercial Law and Arbitration* 157.

263) Spagnolo (2014), above n 247, Chapter 3, p. 50.

IV. Efficiency of CISG for Contracting Parties in the Region

try, and to shift burdens to least-cost avoiders.²⁶⁴⁾ Some efficient penalty default rules are included.²⁶⁵⁾

In particular, once post-contractual efficiencies are considered, the CISG as presently developed, while no means perfect, meets the criteria that would allow us to conclude that it is an efficient choice for most international sales transactions. Naturally, this will not be universally true, as transaction features differ.

An example of its efficient design regarding substantive rules is the adoption throughout its rules of a *favor contractus* stance. In international sales, this is a particularly efficient design, since termination and unwinding of international transactions is generally expensive and wasteful.²⁶⁶⁾ The CISG's restrictions on avoidance of the contract by requiring fundamental breach before making termination available is an entirely appropriate and efficient as a default rule.²⁶⁷⁾

Elsewhere, this author has undertaken a broad comparison of a range of its features, including: formation, the *favor contractus* stance, rejection of the parol evidence rule, damages and preservation rules. This author has concluded that, by comparison with rules of other laws which are frequently chosen for international sales (such as English, law and New York, or even Swiss law) that overall the CISG is relatively as efficient, if not more efficient, than these laws.²⁶⁸⁾ Furthermore, the costs of opting out of the CISG are relatively low.²⁶⁹⁾ The CISG generally provides a majoritarian, efficient default position²⁷⁰⁾ combined with flexibility for parties to tailor rules if they

264) Id., Chapter 3, p. 48.

265) Id., p. 46.

266) Id., Chapter 4, pp 54-59.

267) Id., pp 99-104.

268) Id., pp 87-110.

269) Id., p. 108.

270) Id., Chapter 5, pp 152-155.

wish: Art. 6 CISG.

These considerations relate to substantive rules of law. Nevertheless, a matter which is often overlooked is the non-substantive advantages or disadvantages of default rules. In earlier work on this issue, the author has concluded that there are considerable learning and network effects that mean that, over and above any substantive efficiencies, the CISG brings economic advantages to parties in terms of information costs at the contractual stages of negotiation,²⁷¹⁾ performance, and dispute resolution. This is achieved through a range of advantages, including accessibility and simplicity. It provides improved market access by various means, including the provision of a neutral legal platform.²⁷²⁾ It can also allow a single party to reduce the number of laws with which it must be familiar for the purposes of administering the performance of all the contracts to which it is a party.²⁷³⁾ In other words, it can reduce post-contractual performance costs.

Additionally, it carries valuable economic benefits in terms of providing a more certain choice of law rules and a reduced forum risk, bringing contracting parties more predictable outcomes should a dispute arise. Clarity and certainty is increased as to which law will be applied to the contract and the outcome will be more certain no matter which forum eventually hears the matter.²⁷⁴⁾ Furthermore, litigation costs are reduced by the CISG in terms of eliminating the cost of proof of foreign law, the need for expert evidence to that effect, and accessibility of the law.²⁷⁵⁾ In other words, it reduces post-contractual litigation/enforcement costs, and this simplification and improved certainty may encourage settlement of disputes, thereby allowing par-

271) *Id.*, pp 119-125

272) *Id.*, pp 126-127.

273) *Id.*, pp 128-129.

274) *Id.*, pp 129-132

275) *Id.*, pp 129-132

IV. Efficiency of CISG for Contracting Parties in the Region

ties to minimize or avoid enforcement costs altogether.

Combined with the substantive efficiencies mentioned above, these non-substantive advantages suggest the CISG is an efficient choice of law for contracting parties.

However, some critics suggest that the CISG does not improve transactional efficiency because most parties are either “sophisticated” and thus choose to exclude the CISG (incurring opt out costs as a result), or are relatively “unsophisticated” and thus unwittingly apply the CISG by default (so efficiency gains at the contractual stage are irrelevant because parties do not consciously choose law anyway).²⁷⁶⁾

This argument has some validity, however, one need only point to the slowly decreasing exclusion rates by lawyers (discussed in Chapter III above), plus other statistical and anecdotal evidence of increased use of the CISG, to demonstrate that even “sophisticated” parties are becoming less inclined to exclude.

As the CISG becomes less and less excluded, it can be expected that network effects will increase the economic advantages of its use for contracting parties, which may encourage more “conscious” decision making about choices of law.

C. Causes of Exclusion by Contracting Parties

This author has previously argued that there is sufficient evidence from statistical and anecdotal evidence to suggest that the reasons for exclusion of the CISG primarily stem from the levels of unfamiliarity and information costs.²⁷⁷⁾ There is a strong correlation between the level of unfamiliarity within a particular jurisdiction on the one hand, and lawyer propensity to ex-

276) *Id.*, Chapter 5, pp 142-151.

277) *Id.*, Chapter 6, p. 189.

clude the CISG within that jurisdiction on the other. Indeed, this is the factor most strongly correlated to lawyer preference for exclusion.²⁷⁸⁾

This may be further exasperated by higher information costs, primarily from lack of educational focus upon the CISG in law curricula, but also from lack of CISG litigation within a given jurisdiction, both of which can be related to the propensity to exclude the CISG, leading to a self-perpetuating cycle of inefficient choices.²⁷⁹⁾

This author has also argued by reference to game theory that in high-exclusion jurisdictions, law firms may further encourage this inefficient cycle by failing to reward more efficient choices of law.²⁸⁰⁾

Irrational tendencies by lawyers to exclude the CISG, despite its efficiency, are more pronounced in some jurisdictions than others, and appear to be path dependent behaviour based on the institutionalization of inefficient heuristic choices of law in certain jurisdictions amongst lawyers, law firms, and in trade associations.²⁸¹⁾ Status quo biases may reinforce social group ‘herd behaviour,’ where exclusion rates are high, preventing rational and efficient choices, and encouraging suboptimal choices of law.²⁸²⁾

It seems likely that some exclusions, particularly “automatic” or “semi-automatic” exclusions of the CISG, are more likely to be driven by these psychological factors rather than rational economic choice. Naturally, where they

278) *Id.*, pp 164, 189. See also regarding lack of familiarity amongst South Korean lawyers: Yong Eui Kim, ‘The Present and Future Role of the CISG in Korea’ (2010) 48 *Dong-A Law Review* 737, (finding of 20 small firm lawyers surveyed, 90% responded that they were unaware of the CISG, and that of 10 lawyers surveyed from large firms, over 50% were unaware of the CISG. Additionally, of the latter group, Kim reports that most familiarity is not in respect to the detail of the CISG but rather its exclusion, for which respondents mention standard form exclusion clauses: pp 5, 6).

279) Spagnolo (2014), above n 247, Chapter 8, pp 232-233.

280) *Id.*, Chapter 7, pp 205-211

281) *Id.*, Chapter 7.

282) *Id.*, especially pp 202, 212.

are suboptimal, exclusions reduce the effectiveness of the CISG in reducing transaction costs and increasing trade.

D. Change - Proactive Promotion of Familiarity and Use

One might anticipate that accession to the CISG would be considered favourably because of:

1. possible advantages for the jurisdiction's economy (tested in Chapter V); and
2. the potential for lower transaction costs and efficiency gains for individual business (discussed above).

However, it is not enough to simply formally adopt the CISG to capture such gains. There is also the question of exclusion by the parties. While exclusion on the basis of choosing a law that better suits the transaction than the CISG is perfectly rational, unfortunately, in most cases choices are not based on an evaluation of competing choices. Instead we see, in some jurisdictions more than others, that exclusion rates are heightened amongst lawyers who are unfamiliar with the CISG and do not wish to invest in becoming familiar with it. Such lawyers face a moral hazard,²⁸³⁾ and may inefficiently “automatically” opt out of the CISG, influencing businesses in their jurisdiction more widely to also exclude “automatically”.

Many such opt outs are likely to be suboptimal, as they may result in the choice of less efficient laws, given they are not based on any rational comparison. This may actively reduce the kinds of efficiency gains that adoption of the CISG was anticipated to have for individual business and for the jurisdiction's economy.

The question then arises: how can this problem be prevented? Can the negative cycles discussed above be broken?

283) *Id.*, Chapter 6, pp 196-201.

The answer may be twofold, and is indicated by the very factors that lead to unfamiliarity and inefficient exclusions in the first place: lack of education and exposure. To this end, the following steps are recommended in all jurisdictions that have either already adopted the CISG, or are considering doing so:

1. Ensure professional entry qualification exams (bar exams) include knowledge of CISG as a fundamental part of examinable material;
2. Require university law courses to include CISG in the curriculum, preferably within compulsory courses on contract law, or alternatively in courses on international commercial transactions;
3. Provide legal training on CISG to practising lawyers and judges; and
4. Encourage professional bodies to run seminars or conferences about CISG.

The inclusion of the CISG in bar exam requirements is noteworthy because it often exists in jurisdictions with much lower levels of unfamiliarity – notably this is true of China. Jurisdictions that score best on familiarity also tend to have higher exposure to CISG in university courses. Such measures ensure that before they reach professional practice, lawyers have already invested (‘internalized’) the costs of becoming familiar, so that this factor is less likely to influence their choice of law.²⁸⁴⁾ South Korea now also has CISG as a permanently examinable subject on its bar exam.²⁸⁵⁾

Development aid assistance in the form of capacity building programs may assist in this regard, and some of the bodies active in legal development and technical assistance in the Asia Pacific (see Chapter 6) could play a role in this process. Such steps may help prevent the institutionalization of “automatic” exclusions and help ensure the advantages of the CISG are fully realized for the benefit of individual parties and the jurisdiction.

284) *Id.*, Chapter 7, pp 214-216.

285) Kim, above n 278, p. 6.

E. Change – China

A key factor that may be behind the gradual lowering of exclusion rates by parties across the globe may be the impact on choice of law preferences around the world generally by the trade powerhouse, China.

Previously I have argued that, given its enormous economic power, Chinese counterparties can be assumed to have the stronger bargaining in a high proportion of transactions with parties from other nations.²⁸⁶⁾ As such, Chinese lawyers appear to be more likely to prefer the CISG than lawyers from other jurisdictions (see discussion in Chapter III), and may be increasingly in a stronger position to demand a choice of the CISG, or alternatively to extract less attractive terms for a counterparty that insists on a different choice.²⁸⁷⁾

China's large and growing economic power can be expected to force a growing number of its trading partners to use the CISG in their sales transactions with Chinese counterparties, and this in turn can be expected to reduce exclusions of the CISG over time.²⁸⁸⁾

Specifically, this can be expected over time to lead to law firms reassessing practices within their firms that may have institutionalized “automatic” exclusions of the CISG in choices of law.²⁸⁹⁾

This prediction appears to be consistent with the data on growing use of the CISG, and with data indicating that parties are, globally speaking, possibly becoming more familiar with the CISG, although it is difficult to determine this conclusively just yet.²⁹⁰⁾ Certainly, this might be expected if par-

286) Spagnolo, (2014), above n 247, Chapter 6, pp 176-177.

287) Id., Chapter 6, pp 175-177.

288) Id., pp 176-177.

289) Demonstrated by reference to Game Theory in the discussion: Id., pp 202-213.

290) In 2009 responses of lawyers to the GSLP survey indicated that 56% of participants felt they were familiar with the CISG, 28% ‘somewhat’ familiar, while 9% were not familiar with it (See Appendix 2 for confidence levels). This is quite a high degree of familiarity, but, as we have not previously had an international survey of this nature, it is

ties are forced into choices which lead to the CISG's application.

F. Recommendations

Further research on changes in rates of exclusions and familiarity levels as well as educational and other training responses in the region are needed.

1. As yet, no large regional study exists on use of the CISG.
2. The author recommends that careful study design be undertaken:
 - To ensure the data will be of maximum benefit in identifying trends and reasons for behaviours regarding exclusions; and
 - So that the results of the survey can be compared with as many of the earlier studies as possible.

G. Conclusion

In this Chapter the reasons for exclusion of the CISG by contracting parties were explored. In many cases this behaviour can be considered inefficient and one which prevents the possible advantages of the CISG from being entirely realized. The manner in which these could be addressed by any jurisdiction wanting to avoid this problem to maximize the benefits of the CISG for individual parties were discussed.

However, the economic benefits of the CISG for national, regional and world trade are yet to be tested. For the first time, the next Chapter examines the evidence for such economic benefits.

difficult to ascertain whether this represents a shift in familiarity levels or not: Schwenzer, Hachem and Kee, above n 254, [5.8], [5.18] and [5.20].

V. Economic Impact of the CISG on International Trade in the Region

A. Introduction

To the author's knowledge, no measure of the CISG's economic impact on nations that have adopted the CISG has been seriously attempted to date. This is not altogether surprising, as there are severe difficulties in determining whether any law has a particular impact at all. This is especially so where the law affected and/or the subject matter are diffuse. This is certainly true of the CISG and of international trade of goods in general. Both the law and the types of transactions covered are broad. A relatively easier assessment would be an assessment of the impact of a specific and narrow legal measure to deal with an isolated problem, for example, the impact of laws requiring the mandatory wearing of seat belt in saving lives.

Nonetheless, given the nature of the purpose of this report, it takes the first step in attempting to identifying and test the macroeconomic effects of the CISG on the trade of countries which have adopted it. It is important to note that this report does not seek to demonstrate a comprehensive and statistically significant link between the CISG and increased trade. Such work would require a much more detailed study , for which this report provides some suggestions.

The indicators selected in this report to measure trade itself are:

- Overall trade as a percentage of Gross Domestic Product (GDP);
- Exports as a percentage of GDP; and
- Imports as a percentage of GDP.

These measures have been selected as they have the advantage of naturally adjusting for growth in GDP. This means the data presented below is not

sensitive to fluctuations in GDP which might otherwise reduce the reliability of the outcome. Again, the use of GDP eliminates the background impact of the growth in the national economy, allowing us to focus purely on the trend in exports and imports in one country compared to another. It also assists in identifying what effect, if any, implementation of the CISG might have had on imports or exports for each country.

The report uses data that extends retrospectively to 1975 sourced from the World Bank Group.²⁹¹⁾ For most of the countries which have adopted the CISG, reliable economic data is available across this entire period. However a cautionary note must be made in this regard. There are some countries for which there was no reliable data during a particular period. In each of these cases, analysis simply commences from the time at which reliable data becomes available.

The analysis below focuses on trends in exports for the seven Asia Pacific nations that have now adopted the CISG countries. However, it also draws upon data from all CISG countries in the world, not just the Asia Pacific region, since this allows for comparison of regional trends, which may shed light on the overall impact of adopting the CISG in a number of respects.

B. Trade against GDP

The following graph, **Figure 5.1** below, tracks trade as a percentage of GDP for the six of the seven CISG nations of the Asia Pacific. Note that Singapore has been excluded from this and subsequent graphs. This is because its high level of trade would render the graphs more difficult to read. Singapore will be addressed separately in subsequent graphs.

291) See World Bank, *Data*, <<http://data.worldbank.org/indicator>>, accessed on 21 September 2013.

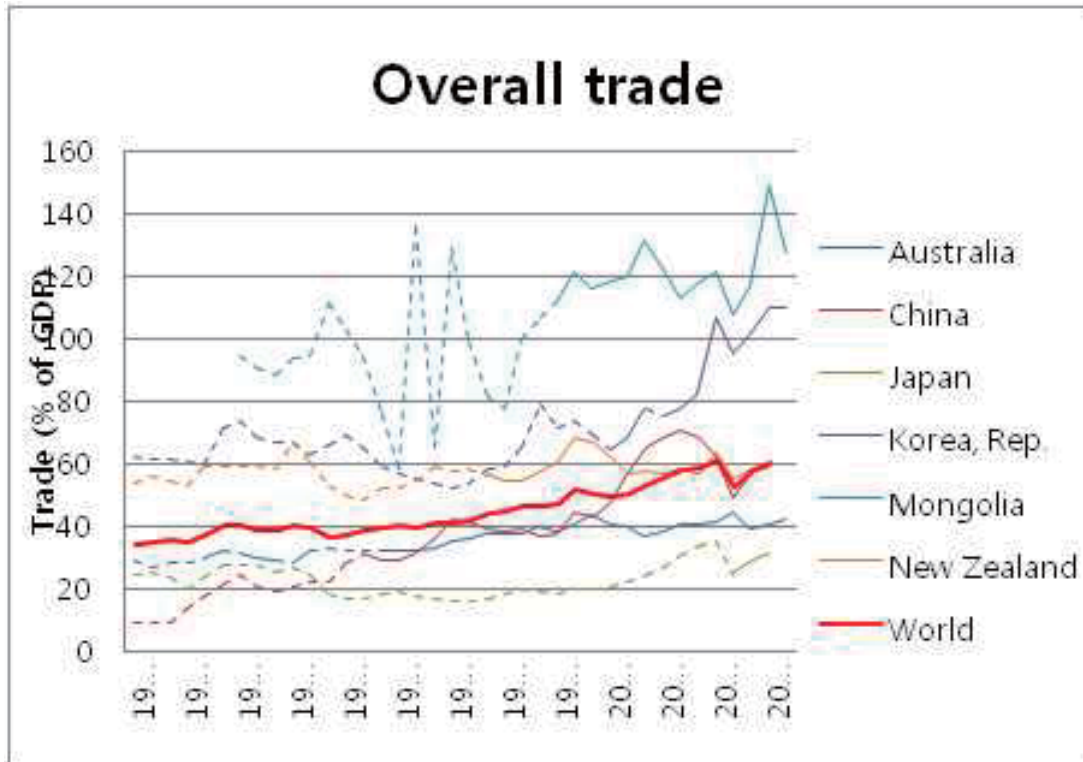


Figure 5.1.

Figure 5.1 shows, in red, world trade as a percentage of world GDP. By comparing this red line against the same statistic for nations in the Asia Pacific region as shown for New Zealand, Mongolia, South Korea, Japan, China and Australia, we can readily compare each of the patterns of trade in those countries with trade patterns in the rest of the world.

Importantly, the focus of this report is not on trade pattern per se, but on the CISG's potential impact on trade. Therefore, a second important frame of comparison is to contrast trade of countries *before* they implemented the CISG against their trade subsequently. To make this clear, for each country, the line is dotted until the time when the CISG entered into force, and then solid after the CISG became law in that country.

Before analyzing the result, it is important to recall that in every case, growth in the particular economy is eliminated by the use of GDP as the

counterpoint. Therefore the fluctuations of the lines is representative of growth in trade alone, compared to the size of the country's economy itself.

New Zealand and Japan aside for the moment, overall increases in the size of a nation's trade can be observed following the time of CISG implementation in each country. This suggests that, at first glance, it might be possible that the CISG has positively affected national trade in countries adopting it.

Despite this, it might be validly argued that the overall patterns in these nations are more or less simply following a similar trend in world trade growth, and as such one should not be too quick to make the preceding observation. The author does not suggest that the cause, or only cause, of the overall increase is simply adoption of the CISG. However, tracking of world trends does not eliminate the possibility that the CISG has had a positive impact on trade in each case. As more and more nations have adopted it, to the point where well over 80% of world trade is now potentially governed by the CISG,²⁹²⁾ it must simultaneously have a similar potential effect on world trade as it may have on national trade levels.

The following graph - **Figure 5.2** - is closely related to **Figure 5.1**, but shows trade of the same six countries against trade in two regions: 'East Asia and the Pacific region';²⁹³⁾ and 'South Asia'.²⁹⁴⁾ These two regional benchmarks are important as they indicate trade patterns of the broader region in which we find these six CISG countries. Looking at trends in trade in these six CISG countries in the context of trade in their own region may assist in

292) Ingeborg Schwenzer and Pascal Hachem, *'The CISG - Successes and Pitfalls'* (2009) 57 *American Journal of Comparative Law* 457, 457.

293) This includes Cambodia, China, Indonesia, Japan, Korea, South (Republic of Korea), Lao PDR, Malaysia, Mongolia, Burma/Myanmar, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Palau, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, Papua New Guinea, Philippines, Singapore, Thailand, Timor Leste, Viet Nam.

294) Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

attempting to identify whether the implementation of the CISG causes any significant deviation from regional background growth in trade.

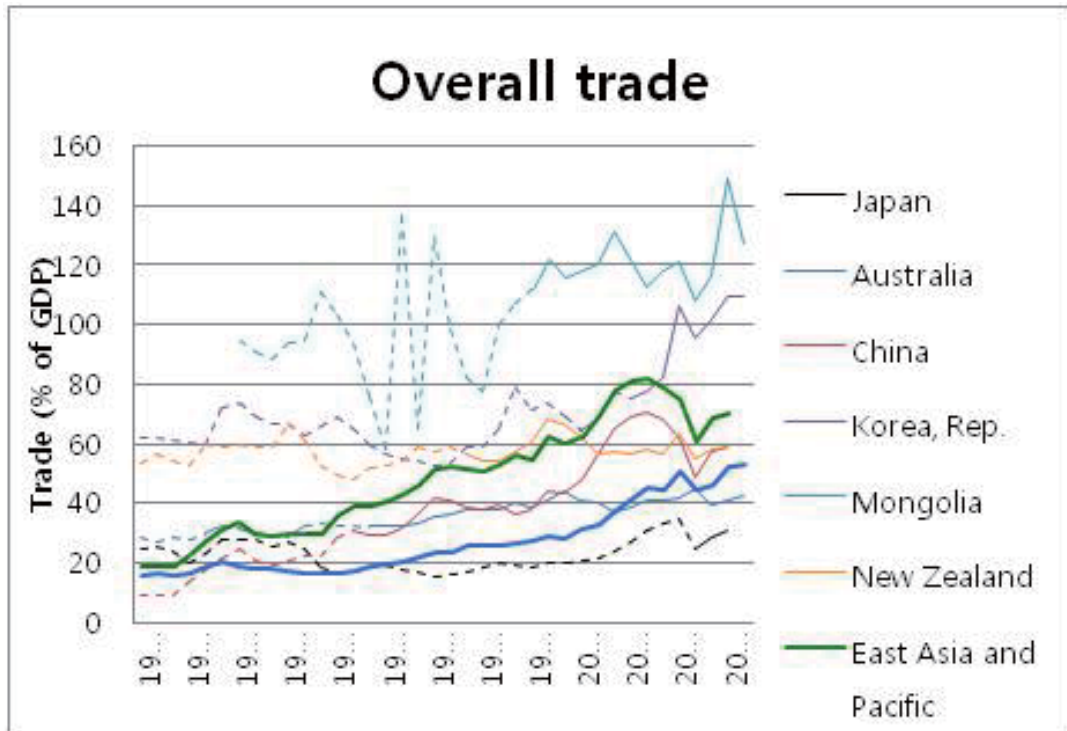


Figure 5.2.

One can again make a similar observation on the face of this graph that trade seems to improve after adoption and that improvement also follows regional trends. However, **Figure 5.2** more closely shows the relevance of the above qualification - observe the close tracking between East Asia & Pacific trends and the increase in trade in China.

Naturally the size of Chinese trade and its large increase in trade in the last decade has a large effect on East Asia and Pacific trade growth. Yet it is equally true that China was an early adopter of the CISG, so the possibility that the CISG has, since 1988 when implemented in China, had some impact in contributing towards both Chinese and East Asian and Pacific trade growth cannot be ruled out.

C. Import and Exports against GDP

Two further graphs help break down the components within trade figures for these six CISG Asian Pacific countries, to give an indication of how the implementation of the CISG specifically affected the composition of each country's trade.

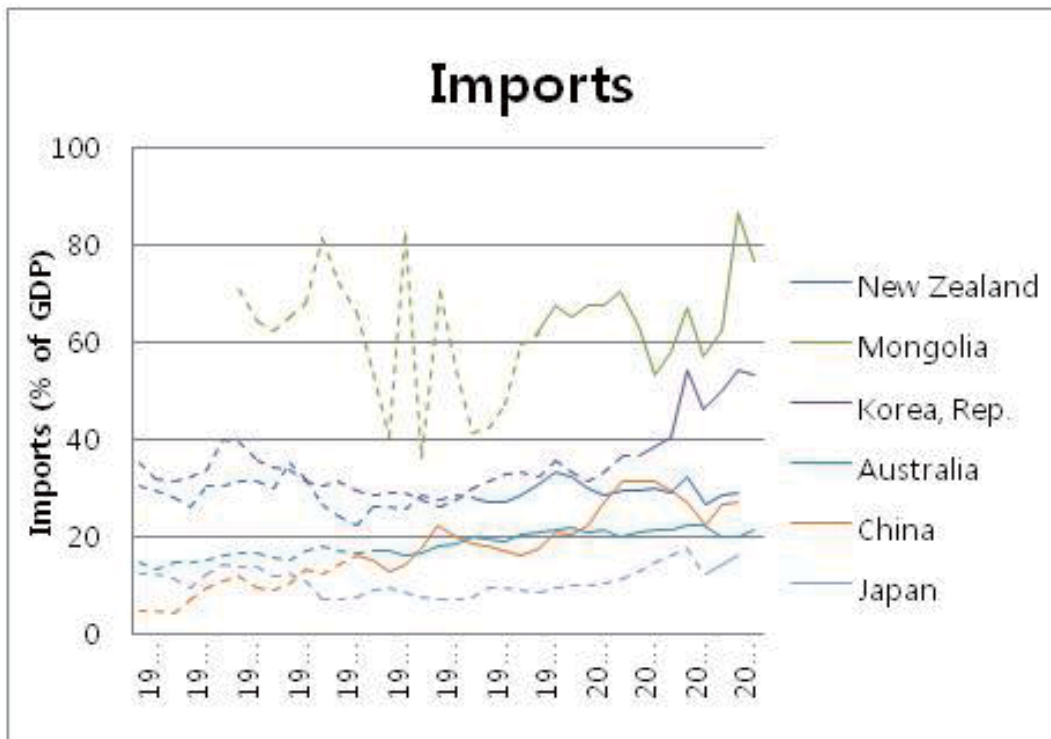


Figure 5.3.

Figure 5.3 demonstrates imports as a percentage of GDP, graphed for each of the six CISG nations within the Asia Pacific region. **Figure 5.4** below graphs exports as a percentage of GDP. Again, the use of GDP eliminates the background impact of the growth in the national economy, allowing us to focus purely on the trend in exports and imports in one country compared to another. It also assists in identifying what effect, if any, the im-

plementation of the CISG might have had on imports or exports for each country.

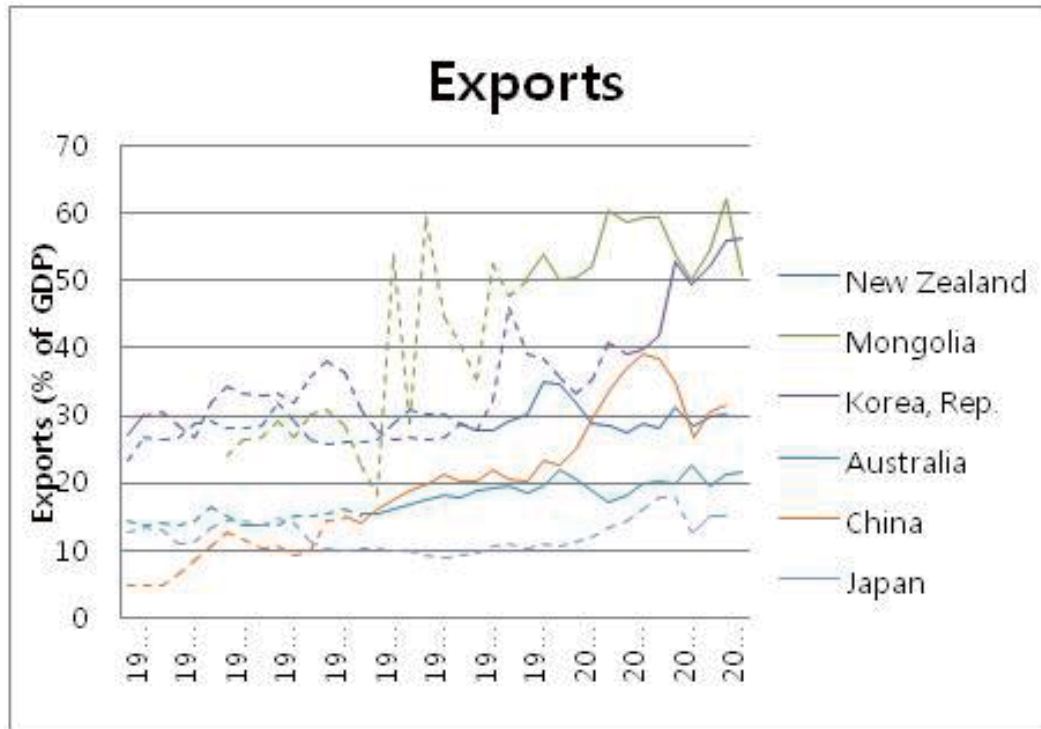


Figure 5.4.

In interpreting the results in **Figures 5.3** and **5.4**, one needs to be mindful of the possible time lag leading to differences between short-term and long-term effects of the CISG. Many of the Asia Pacific CISG countries experienced an immediate increase in trade after implementing the CISG.

A few nations, including Australia, eventually experienced growth, but did not have a noticeable increase until at least a few years after the CISG came into force. Conversely, Japan's trade declined steeply the year the CISG was introduced. However this may be attributed to the fact that the CISG came into force in 2009 in the midst of the global financial crisis. Unsurprisingly, our data shows that trade across this period fell for most economies.

V. Economic Impact of the CISG on International Trade in the Region

These results are largely mirrored in the full sample of all CISG countries (reproduced in Appendix 1). Again, there are exceptions; for example, in Uzbekistan imports fell from 30% of GDP to 22.8% the year after the CISG was implemented and then 18.4% in the following year; while in Russia exports fell from 18.16% of GDP to 13.27%. However these cases are rare, and are generally associated with countries with significant trade volatility. The best example of volatility might be Russia, where exports fell to 13.27% of GDP, then rose to 62.32% the next year, only to fall to 38.2% the year after.

Importantly in almost all cases, trade has eventually risen to levels above those prior to implementation of the CISG. This may be evidence for the CISG creating long-term increases in trade. When turning to Singapore, one finds similar trends reflected in Singapore's trade information. See **Figure 5.5** below.

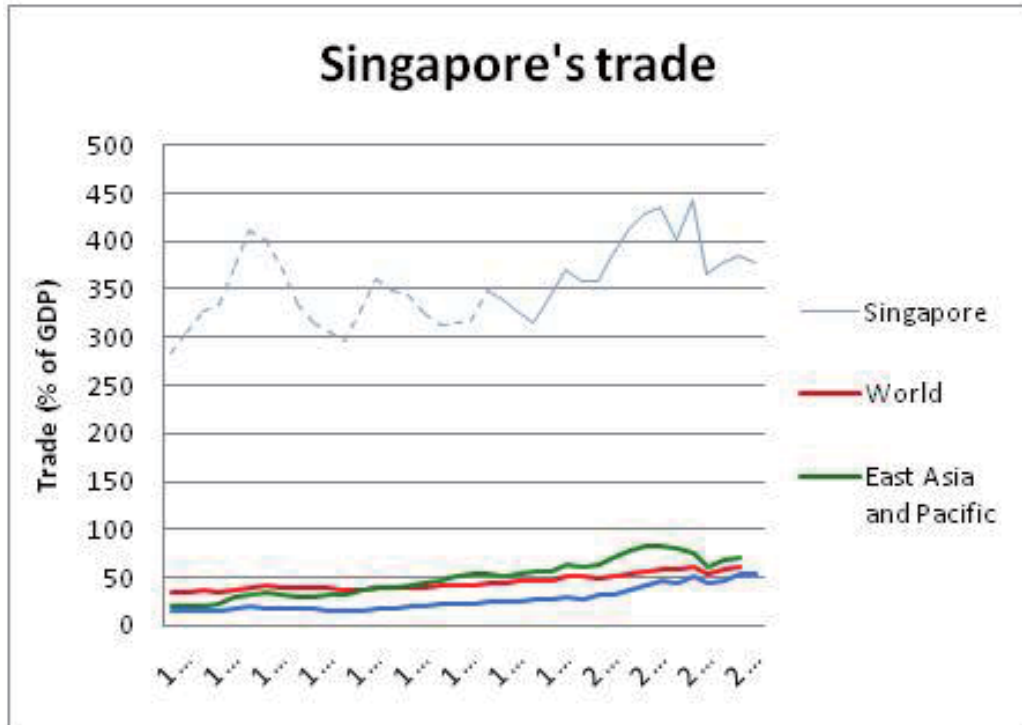


Figure 5.5.

As mentioned earlier in relation to overall trade figures, at first glance the results shown above for imports and exports for CISG countries within the Asia Pacific region indicate that the CISG has been an effective tool in increasing trade. This is what might be expected from the implementation of a policy reform designed to promote greater certainty in international commercial transactions.

D. Globalization and Isolating the Effects of the CISG

It is important to consider more carefully the argument raised earlier: being that the results may rather reflect broader global economic trends beyond the operation of the CISG. Indeed, globalization in particular has had a significant role in increasing trade over the past few decades. **Figures 5.1** and **5.2** both demonstrated the overall increase in world trade and especially growth of trade in the Asian region.

It is therefore difficult to accurately isolate the effects of the CISG on countries' trade. These difficulties are compounded in a number of ways:

a. Differing Macroeconomic conditions and Temporal Differences

- 1) It is impossible to control for all the variables to which trade is sensitive. At a nation-specific level, each country has its own unique macroeconomic conditions, which provide an important context for assessing the performance of the CISG. In particular, one need only consider the enormous difference in size and development between various Asian-Pacific countries, particularly between the larger Asian countries compared to some of the very small Pacific nations. This is complicated by the fact that the CISG has been implemented at staggered times, ranging from 1988 to this year. This necessitates comparing

V. Economic Impact of the CISG on International Trade in the Region

countries across different time periods and, consequently, different global macroeconomic conditions.

- 2) Further, the analysis does not capture the effect of broader forces in the global economy, such as recessions, protectionist policies and conflicts between states. These factors may have had a significant impact on a country's trade and as such our evaluation of the CISG's performance in that country.

b. Limited data size and imperfect benchmarks

- 1) Eighty countries have ratified the CISG to date,²⁹⁵⁾ and this report has focused on three particular trade measures for each. Taken together, this does not give us sufficiently fine data to isolate the effects of the CISG on a country's trade perfectly. By focusing specifically on the Asia Pacific region, this report is further limited given the smaller number of countries that are being compared against the general Asia Pacific region.
- 2) This report has also made use of extensive benchmarking against global and region trade performance. A problem arises here in that in many cases, the countries which have adopted the CISG are significant contributors to trade. The large scale of China's trade in proportion to the Asia Pacific region, for instance, is highly discernible in the regional benchmarks we used. This limits the effectiveness of using benchmarks for larger economies.

c. Applicability of the CISG is not Limited to Nations Implementing It - "Spillage Effects"

- 1) It is difficult to fully isolate the effect of having implemented the CISG in one particular country against another which has not im-

295) See UN CISG Status Website <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=X-10&chapter=10&lang=en>.

plemented the CISG. This is due to the fact that the CISG can be applied to transactions where neither or only one party is from a CISG member state: or where the parties choose as the law of their contract the law of a member state; where the court finds the CISG applicable because pursuant to its conflict of laws rules, the law of a member state applies.

- 2) To illustrate this issue, take two countries, A and B, which trade exclusively with each other. Only A has implemented the CISG. However if the market in B knows that all of its international transactions will be covered by the CISG anyway, the CISG's implementation in A causes the same incentive to increase trade in B as it would in A. The comparison of data between A and B might then erroneously lead one to think the CISG had no discernible impact where in fact it impacted not just one economy, but two. Thus this overlap effect causes "spillage benefits" which make it difficult to distinguish between CISG and non-CISG countries.
- 3) Of course, countries do not operate in a vacuum, and will trade with a wide range of countries, complicating the issue further.

d. Varying Quality of Application and Exclusions

- 1) There are likely to be varying degrees to which the CISG is applied and enforced by the courts and other dispute resolution bodies within different CISG countries. Nations with sophisticated legal infrastructure may be expected to enforce the provisions of the CISG effectively and consistently, however other signatories with weaker legal institutions may not. Likewise, the extent to which the law of the CISG is taught within legal education institutions to law students, and to the judiciary, and the way in which knowledge of the CISG is made compulsory for

qualification to practice law will all impact upon how well it is applied in court cases. Legal education also impacts upon how quickly lawyers in a country become familiar with the CISG, and this in turn, as discussed in Chapter IV, will affect the rate at which lawyers advise their clients to use the CISG or to exclude it.

- 2) These matters alter the impact of the CISG in producing real certainty in international contracting, and can reduce or expand its real economic impact. These things cannot be measured merely by looking to whether a nation has formally adopted the CISG. In a very real way, these matters therefore impact upon the incentive to increase trade due to greater certainty in international contracting from country to country. They explain why the practical implementation within each country is as important as the formal adoption of the CISG itself. Technical application is discussed in Chapter IV.

e. Time Lags

- 1) It is also due to this reason that when looking for the impact of the CISG it is not enough to simply look to the date of implementation. One must take into account the amount of time it takes to build technical expertise and confidence in utilizing and applying the CISG. Consequently, there will be, even in the best case scenario, a time lag between the formal implementation of the CISG and the time it takes for the market to become confident enough to increase trade due to the reform. Professor Cuniberti asserts that parties are “not concerned with the legal regime governing their contracts” and therefore do not consider whether or not to use the CISG, and therefore he concludes that the CISG probably has minimal effect on trade.²⁹⁶⁾ The author of this re-

296) Gilles Cuniberti, ‘Is the CISG Benefiting Anybody?’, 39 *Vanderbilt Journal of*

port addresses this argument in a broader analysis of party and lawyer behaviour elsewhere,²⁹⁷⁾ although the matter is discussed briefly in Chapter IV.

f. Circularity of Cause and Effect

- 1) Another difficulty with measuring the possible impact of the CISG on trade is that the CISG might be adopted by countries precisely because they are implementing a range of legal, economic and other initiatives as part of a wider policy to increase trade levels. The problem is then that CISG adoption may be only one of a number of causes of trade increases, and its adoption is caused by a need to facilitate anticipated trade growth. It is in such cases both a cause and effect of trade growth, making its actual effect very difficult to measure. This is likely to be a frequent circumstance surrounding its adoption, and it is indeed something contemplated in this report. On this point, see the discussion in Chapter 6 on regional trade agreements.

E. Further Research

Although it is beyond the scope of this report to solve each of these problems, three ideas are suggested for any future research in a larger study:

- The use of a greater number of trade indicators to provide more data. Provided data is reliable and available for most countries for significant periods of time, a better and more nuanced picture of the impact of the CISG could be ascertained, allowing any significant relationship between the CISG and trade to be more easily detected;

Transnational Litigation, 1511.

297) Spagnolo (2012), above n 247.

- Breakdowns of particular countries' trading partners to identify how the composition of trading partners changes. Analysis of such a breakdown, and how the composition of a particular country's trading partners alters over time will allow detection of any relationship between the composition of trading partners and the adoption of the CISG. This will enable the testing of the whether or not parties in one country might be more inclined to trade with parties in CISG countries; and
- The hypothesis that countries will trade more with other countries which have also adopted the CISG could be tested.

F. Conclusion

While the data presented in this chapter does not definitively support a conclusion that the CISG does have a positive impact on trade in the nations which have adopted it in the Asia Pacific region, such an impact certainly cannot be ruled out on the basis of this study.

Prima facie, the data appears to demonstrate a positive impact in almost all cases of countries which have implemented it in the region.

However, the conclusion that the CISG is responsible for positive trends in trade for adopting countries is precluded by the difficulty in isolating the effect of the CISG. These problems are discussed above. A larger study design may bring the answer somewhat closer.

VI. The CISG, Geographical Trends, Regional Trade Agreements and Regional Harmonization Efforts

A. Introduction

Given the view developed in Chapter V that the CISG may be responsible for positive effects on trade in the Asia Pacific region where it has been adopted, the next part of this report considers two matters:

1. Whether adoption by one country influences the likelihood of adoption of the CISG by others surrounding it; and
2. The role of Regional Trade Agreements in this process.

B. Geography Hypothesis

This part of the report looks at the possibility that geography, such as regional proximity, might be a significant factor in the likelihood that the CISG will be ratified by a particular country. It tests the suggestion that countries are more likely to adopt the CISG if nearby countries have also adopted it, - the “geography hypothesis.”

We have seen that so far, only seven nations have adopted the CISG in the Asia Pacific region, thus we can say that its adoption until recently has been quite slow for this region. It is therefore particularly important in terms of the Asia Pacific to test the geography hypothesis. This is because recent ratifications by South Korea in 2004 and by Japan in 2008 may, if the hypothesis is true, carry significant implications for the likelihood and speed of future ratifications of the CISG throughout the region.

a. Method of Testing Geography Hypothesis

- 1) This report attempts to assess the significance of geography by comparing the distributions of CISG countries’ ratification dates in each region

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against the overall distribution of all CISG countries' ratification dates in the world.

- 2) Specifically, to measure these distributions, we compare the standard deviations of each set of data. This gives us an indication of how spread out the distributions are: the smaller the standard deviation, the less spread out the dates are; conversely, a higher standard deviation corresponds to greater spread.
- 3) By comparing the standard deviations of each region against the overall standard deviation of all CISG ratification dates, we are able to identify, albeit roughly, the significance of geography in explaining ratification date distributions.
- 4) This is best illustrated with an example. Let us assume a world where there are two continents which operate mostly independently of each other, continents A and B, each comprising a handful of countries. Countries in continent A ratify a particular treaty within a few years of each other; that is to say, there is a relatively low standard deviation. A decade later, a countries in continent B also begin to ratify the treaty, and also do so within a few years. Although the standard deviation for ratification dates of the treaty will be low within each continent, the overall standard deviation when we look at all countries together would be significantly higher, due to the decade between them.
- 5) It is this difference which underpins the subsequent analysis, reflecting the important contribution geography makes to the overall ratification date disitributions in our illustrative fictional world. This is what we would expect of a treaty designed to facilitate and promote trade: countries close to each other, and therefore more likely to be significant trading partners, are more likely to adopt the CISG if their neighbours have too.

b Limitations

- 1) Before proceeding with an analysis, it is important to note several important limitations.
- 2) Firstly, the following study is necessarily limited by population size, since there are only eighty CISG countries²⁹⁸⁾ currently in the world. Such a small population size makes it hard to detect small effects.
- 3) This becomes even more problematic when we break ratification dates down by region. Although there are 35 European signatories, there are only 10 in Africa, 16 in the Americas and 19 in Asia. If we break Asia down into separate regions, the number of countries being tested falls to as low as two for Oceania - Australia and New Zealand.
- 4) A second major limitation is that rates of ratification really cannot be assessed as something independent of the legal and political context in which the adoption of treaties takes place. Some brief comments will be made about some of the more pertinent political and legal issues following the statistical analysis.
- 5) Therefore this report does not attempt to mount a statistically rigorous survey of the data. Nonetheless, the analysis forms a useful starting point for assessing the incentives countries face to adopt the CISG.

The following tables illustrate the standard deviations for ratification dates for the CISG. **Table 6.1** demonstrates the standard deviation for the World and for the regions of Asia, Europe, the Americas and Africa. In **Table 6.1**, Asia is presented as a whole, and the Americas includes both North and South America.

298) See UN CISG Status Website <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en>.

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Table 6.1.

Region	World	Asia	Europe	Americas	Africa
Standard Deviation	8.38	8.72	7.03	8.86	10.12

In the following **Table 6.2**, the standard deviations for ratification rates are shown by a more detailed breakdown for Oceania and for two separate groups of Asian countries: Western and Central Asia (Armenia, Bahrain, Cyprus, Georgia, Iraq, Israel, Lebanon, Syria, Turkey, Khyrgistan, Uzbekistan) and East, South and South East Asia (including Burundi, China, Japan, Mongolia, South Korea, Singapore).

Table 6.2.

Region	Asia (Western and Central)	Asia (East, South and South East)	Oceania
Standard Deviation	9.48	7.6	4.24

The first region analysed in detail is Europe, as indeed Europe conforms with the hypothesis that geography is a determinant in whether countries adopt the CISG. The standard deviation of Europe's ratification dates, as in **Table 6.1**, is smaller than that of the world. This finding is significant because, of all the regions, Europe has the largest number of CISG signatories. The European result might suggest that the adoption of the CISG by one nation within a region tends to encourage its adoption by others within quick succession.

However, this smaller standard deviation could instead be due to other factors. European integration, for instance, has been a significant force in in-

ducing the harmonization of laws across European Union countries. **Figure 6.1** below shows the number of total CISG ratifications in Europe from 1981.

It may also be said that of all the regions, the countries in Europe have, on aggregate, the most advanced legal systems. This might mean they also have a greater capacity to undertake and implement harmonization programs, and perhaps greater need to implement a set of uniform trade laws. This could also explain the faster and adoption of the CISG throughout Europe.

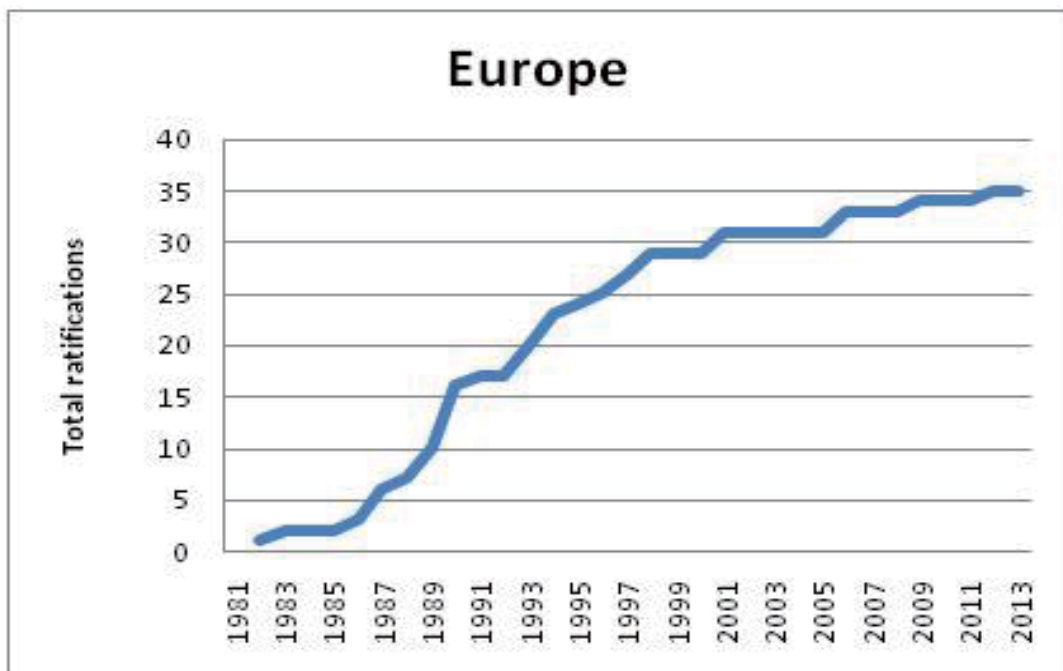


Figure 6.1.

The importance of considering the level of development of legal institutions within a country is demonstrated further by Africa, where we get a result adverse to our geography hypothesis. Its standard deviation, as shown in **Table 6.1**, is higher than that of the rest of the world, suggesting that African countries' ratification of the CISG is less connected with its neighbours' adoption of the CISG than other factors.

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It may be suggested that important among these other factors is the development of its legal institutions, and that unlike countries with more developed legal architecture, African countries have less capacity to implement the CISG. Perhaps this is best illustrated in the case of Ghana. While Ghana was a key player in negotiations, participated in the Diplomatic Conference and ratified the CISG, it has never actually implemented it in legislation as required by its constitutional system.²⁹⁹⁾

This suggests an important extension to the geography hypothesis. In predicting whether a county or region is likely to adopt the CISG, it is necessary to take into account the national and regional legal history and development.

The results from Asia and the Americas are of limited statistical significance, due to the small number of countries in each region. The standard deviations of both are slightly higher than that of the world. This means that the result from these regions neither detracts from nor supports the geography hypothesis.

However aside from geography and legal development, our data suggests a third important driver of CISG adoption: inter-regional trade itself. This analysis offers two case studies as evidence of this point.

c. Acceleration in Ratification within Trade-Heavy Regions when Significant Trading Nations Ratify

- 1) Referring back to **Figure 6.1**, it is possible to discern a significant acceleration in the number of European states that ratified the CISG from around 1986 onwards. This coincides with the year that the US and China ratified the CISG, both significant major partners to a large num-

299) Emmanul Laryea, 'Why Ghana Should Implement Certain International Legal Instruments Relating to International Sale of Goods Transactions' (2011) 19(1) *African Journal of International and Comparative Law* 1.

ber of European countries at that time, although the effect is likely to have been amplified to some extent by European integration and the strength of Europe's legal institutions.

d. Absence of Acceleration in Ratification within Low Trade Exposure Regions when Significant Trading Nations Ratified

- 1) By contrast, as **Figure 6.2** illustrates, other regions of the world with fewer heavily trade-exposed countries, including Africa, did not exhibit such a sharp rise in CISG ratifications at that time.

Therefore, on the basis of these observations, it may be suggested that where a country's large trade partners ratify the CISG, it will be more likely to adopt it itself. Further research to investigate this link would provide greater insights into this potential influence.

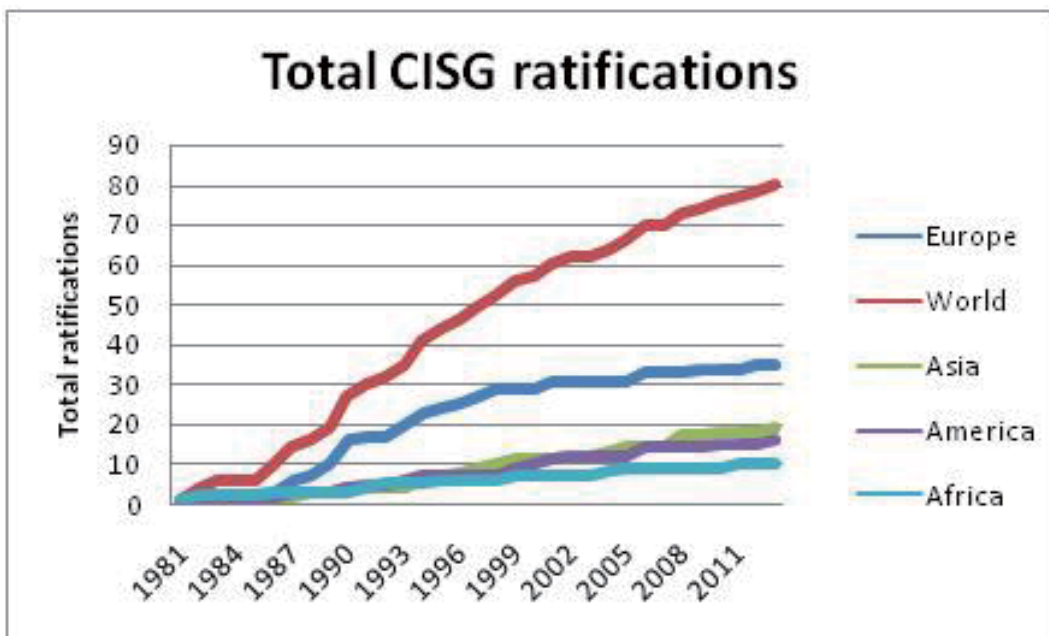


Figure 6.2.

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Where does this leave our original geography hypothesis? That depends. The data does not enable us to make a safe prediction that when countries in a region adopt the CISG, other countries in that region will follow.

However, it does provide a framework through which to view the incentives countries face in deciding whether to adopt the CISG. Looking to a particular country's neighbours and whether they have adopted the CISG could be a helpful starting point in predicting whether they are likely to ratify.

Yet it is equally important to look at both the legal development and institutions of the particular country, and whether that country's major trade partners from outside the region have adopted the CISG.

That both intra-regional and inter-regional trade are potential influences is an important reminder that the negotiations for regional trade agreements could significantly accelerate any beneficial effects from the CISG for any one nation and for entire regions.

C. Regional Trade Agreements and Regional Harmonization Efforts

In this section of the report, the role and potential influence of regional trade agreements and other regional harmonization projects is considered.

Regional Trade Agreements (RTAs) have proliferated in the Asia Pacific region. It would be impossible to list them all here. However, some of the more influential RTAs in the region include:

a. PACER Plus 2009

- 1) The Pacific Agreement on Closer Economic Relations Plus Agreement (PACER Plus) involves 15 nations from the Pacific plus Australia, New Zealand, PNG, Solomon Islands and Samoa.³⁰⁰ Negotiations com-

300) See Department of Foreign Affairs and Trade (DFAT), Australia <<http://www.dfat.gov.au>>

menced in 2009 and are still ongoing, with nothing yet agreed. The latest (6th) meeting took place in Auckland on 2 November 2013.³⁰¹⁾ Talks are primary aimed at promoting economic development of the “Forum Island Countries” (FICs) through greater regional trade and economic integration,³⁰²⁾ regarding (problematically) labour mobility,³⁰³⁾ rules of origin,³⁰⁴⁾ Sanitary and Phytosanitary (SPS) Measures, Technical Barriers to Trade (TBT) and development assistance to enable trade opportunities and investment to grow in the FICs.³⁰⁵⁾

- 2) To this end, the Office of the Chief Trade Adviser (OCTA) was established and funded by Australia and New Zealand to provide independent advice and support to the FICs in negotiations on PACER Plus.³⁰⁶⁾ On SPS and TBT, WTO commitments have been reaffirmed and parties are attempting to negotiate development assistance for exports from FICs to Australia, New Zealand and other countries.³⁰⁷⁾ On Standards and Customs Procedures, PACER Plus seeks “a long-term comprehensive programme of customs modernisation in the FICs”.³⁰⁸⁾

gov.au/fta/pacer/>. Those negotiating include: Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, although it seems PNG may withdraw: see <<http://www.bilaterals.org/spip.php?article23315>>.

301) Forum Trade Ministers Meeting Outcomes, 19 July 2013

<http://www.forumsec.org/resources/uploads/attachments/documents/2013_FTMM_Outcomes.pdf>.

302) DFAT <<http://www.dfat.gov.au/fta/pacer/>>.

303) See Forum Trade Ministers Meeting Outcomes, above n 256. There have been reports that Australia and NZ were not agreeing on any substantial commitments regarding labour mobility, and that a member of a FIC viewed this as a lack of commitment to development assistance: <<http://www.islandsbusiness.com/2013/5/trade/roadblocks-on-pacer-plus-talks/>>.

304) According to OCTA, below, n 260, these “serve as the eligibility criteria for preferential market access under a trade regime / agreement”, and are less stringent than the SPARTECA rules which were seen as ineffective.

305) OCTA, <<http://www.octapic.org/trade-negotiations/pacer-plus/>>, p. 6.

306) *Id.*, p. 10.

307) *Id.*

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b. RCEP 2012

- 1) RCEP is the Regional Comprehensive Economic Partnership 2012, an “ASEAN-centred proposal for a regional free trade area”.³⁰⁹⁾ The countries involved are the 10 ASEAN Member states (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam) and the ASEAN FTA Partner states (Australia, China, India, Japan, South Korea and New Zealand).³¹⁰⁾
- 2) The RCEP will cover trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues.³¹¹⁾ ASEAN states that relevant issues are (relevantly): trade in goods (eliminating tariff and other barriers); trade in services (eliminating restrictions); investment (promotion, protection, facilitation and liberalization); Economic and technical cooperation (including electronic commerce). The RCEP negotiations begin early 2013 and aim to be completed by the end of 2015.

c. TPP

- 1) The Trans-Pacific Partnership Agreement (TPP) is between Brunei Darussalam, Chile, New Zealand, Singapore, Australia, Canada, Japan, Malaysia, Mexico, Peru, US and Viet Nam. Negotiations are currently taking place in October-November and will cover the following is-

308) Id.

309) DFAT <<http://www.dfat.gov.au/fta/rcep/>>.

310) ASEAN <<http://www.asean.org/news/asean-statement-communicues/item/regional-comprehensive-economic-partnership-rcep-joint-statement-the-first-meeting-of-trade-negotiating-committee>>.

311) ASEAN, RCEP Guiding Principles <<http://www.asean.org/images/2012/documents/Guiding%20Principles%20and%20Objectives%20for%20Negotiating%20the%20Regional%20Comprehensive%20Economic%20Partnership.pdf> 1>. See also First Meeting Joint Statement, 8 May 2013 <http://www.asean.org/images/2013/other_documents/Joint_statement_1st_RCEP%20TNC_08May2013_final.pdf>.

sues:³¹²⁾ rules of origin; government procurement; state-owned enterprises; and investment.

- 2) The TPP aim to address issues of regulatory coherence.³¹³⁾ It will address SPS and TBT matters, and competition law reform.³¹⁴⁾ It has been reported that “[n]egotiating groups are currently believed to be developing consolidated legal texts to cover all aspects of commercial relations amongst the TPP countries. These texts are said to include ecommerce and government procurement. However these negotiations are subject to confidentiality restrictions, and as a result the state of progress and likely outcomes of the negotiations are unknown at this time.”³¹⁵⁾

d. Bilateral Treaties

- 1) These are numerous, so some samples will suffice.

i. Australia-India Bilateral Comprehensive Economic Cooperation Agreement

1. This treaty is presently under negotiation, and seeks to address barriers for trade in goods and services, investment and economic cooperation between Australia and India.³¹⁶⁾
2. A feasibility report considered that regulatory measures might be reformed as part of this agreement, but focussed on professional mobility and competition law, and not contract law reform.³¹⁷⁾

312) DFAT <<http://www.dfat.gov.au/fta/tpp/>> .

313) Congressional Report <<http://www.fas.org/sgp/crs/row/R42694.pdf>>, 46.

314) *Id.*, 28.

315) Timothy D Castle, *Consultancy Report prepared for UNCITRAL RCAP*, 2013 (the author assisted in the preparation of this report) (UNCITRAL Report) [3.4].

316) Australia-India Joint FTA Feasibility Study <<http://www.dfat.gov.au/fta/aifta/Australia-India-Joint-FTA-Feasibility-Study.pdf>>.

317) *Id.*

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ii. *New Zealand - India Bilateral Trade Agreement*

1. New Zealand is currently negotiating a similar bilateral trade agreement with India.³¹⁸⁾ A joint feasibility study was done in this regard as well, but did not mention contract law reform.³¹⁹⁾ Rather, competition and customs laws are discussed.

iii. *India - Singapore Comprehensive Economic Cooperation Agreement*

1. This agreement was finalized in 2005, and deals with investment, however it does not cover contract law reform.³²⁰⁾

iv. *India - Korea Comprehensive Economic Partnership Agreement*

1. This agreement was finalized in 2009 and came into effect 1 January 2010.³²¹⁾
2. Investment and customs procedural reforms are discussed, but not contract law.

v. *Japan-Indonesia Bilateral Trade Agreements*

1. The Agreement between Japan and the Republic of Indonesia for an Economic Partnership has been in effect since 2008,³²²⁾ but is currently under renegotiation as it is of purportedly more beneficial to

318) Ministry of Foreign Affairs and Trade (MFAT), New Zealand, <<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/India/index.php>>.

319) India - New Zealand Joint Study for a Free Trade Agreement/Comprehensive Economic Cooperation Agreement, <<http://www.mfat.govt.nz/downloads/trade-agreement/india/nz-india-joint-study-report.pdf>>.

320) Singapore Government, 'Free Trade Agreements,' <http://www.fta.gov.sg/fta_cca.asp?hl=6>.

321) *India-Korea Comprehensive Economic Partnership Agreement* <<http://commerce.nic.in/trade/INDIA%20KOREA%20CEPA%202009.pdf>>.

322) *Japan-Indonesia Bilateral Trade Agreements* <<http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf>>.

Japan than to Indonesia.³²³⁾ Again, the focus is on customs procedures.

vi. *Indonesia-Australia Comprehensive Economic Partnership Agreement*

1. Negotiations continue, with the aim of harmonizing standards and regulations,³²⁴⁾ including standards relating to electronic commerce; competition policy; government procurement; intellectual property rights; environment; and labour.³²⁵⁾ The agreement's focus is primarily on customs regulation (particularly for raw materials). It does not discuss a general lack of coherent contract laws between Australia and Indonesia as an impediment on trade.

It can be seen that, thus far, the CISG and contract law reform have not been given attention within bilateral or multilateral trade agreements in the region. However, this is not to say that such issues could not be addressed within such documents.

Indeed, the depth of measures being considered in the TPP suggests that such negotiations might be ideal forum in which to address the need to encourage state party members to accede to the CISG as a simple measure designed to improve the regulatory framework of law supporting and facilitating trade between member states. Were regional governments sufficiently appraised of the benefits of CISG membership and its growing relevance for international trade, they might well consider raising commitments to join the

323) Hendarsyah Tarmizi and Linda Yulisman, 'RI, Japan agree to renegotiate economic partnership deals,' (October 2013) *The Jakarta Post* <<http://www.thejakartapost.com/news/2013/10/09/ri-japan-agree-renegotiate-economic-partnership-deals.html>>.

324) Indonesia-Australia Business Partnership Group, '*Position Paper*', (31 October 2012) <<http://www.dfat.gov.au/fta/iacepa/submissions/ia-bpg-position-paper.pdf>>

325) DFAT <<http://www.dfat.gov.au/fta/iacepa/ia-cepa-guiding-principles.html>>; Indonesia-Australia Business Partnership Group, above n 325.

VI. The CISG, Geographical Trends, Regional Trade Agreements and
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CISG in future trade talks. Agreements such as the TPP may be suitable arenas for this in future discussions on trade facilitation in the region; in respect of bilateral treaties, this could also form the basis of sections relating to reducing trade barriers by harmonization of laws, improving their accessibility and reducing information costs (see Chapter IV).

Indeed, some nations in the region recognize the connection between these issues. Viet Nam's Dr Nguyen Minh Hang, has commented that joining the CISG, together with free trade agreements such as the TPP, will make it easier for Viet Nam to participate in trade and investment.³²⁶⁾

D. Technical Assistance

An important aspect of many RTAs is developmental assistance. This can take the form of assistance with policy formulation, structural organization, drafting assistance, technical training and resourcing, and broader educational or capacity building, either at government, professional or student level . Support at each of these stages can be crucial in ensuring development of appropriate legal infrastructure to encourage trade.

Some of the technical assistance presently underway in the region is outlined in Chapter II, which notes some specific efforts funded by various governments including Australia, the EU, USA, Canada and Denmark. Australia has assisted in corporations law reform in Samoa, Tonga and Solomon Islands.³²⁷⁾

a. Asian Development Bank

1) Legal assistance programs offered under the umbrella of Official

326) Intellasia, 'Vietnam Prepares for CISG Membership' (November 2013) <<http://www.intellasia.net/vietnam-prepares-for-cisg-membership-316389>>.

327) <<http://aid.dfat.gov.au/countries/pacific/rp/Documents/private-sector-development-pacific.pdf>>.

Development Assistance are often funded by the World Bank and the Asian Development Bank (ADB). The ADB has been active in developing legal and administrative infrastructure in many countries including Solomon Islands, Vanuatu,³²⁸⁾ Bangladesh,³²⁹⁾ and Cambodia³³⁰⁾ (see Chapter II).

- 2) The ADB is the largest provider of technical assistance in the South Pacific. It has offices in Fiji, Papua New Guinea and Timor-Leste, and is present in Samoa, the Solomon Islands, Tonga and Vanuatu. Its Australian Pacific Liaison and Coordination Office hosts the Pacific Infrastructure Advisory Centre which coordinates donor assistance for economic infrastructure in the Pacific.³³¹⁾ Funding for its Pacific Private Sector Development Initiative has been primarily provided for by AusAID, and focuses on government enterprise reforms, public private partnerships, financial sector reform and business and finance regulatory reform. The program may therefore encompass issues relating to technical assistance to Pacific Island countries in the “adoption and implementation of uniform trade law texts.”³³²⁾ Its projects are typically long term and very comprehensive. It assisted with the drafting and implementation of the Solomons Companies Act 2009 as part of a three year project which ensured that the legislation was tailored to local needs, including the creation of “Community Companies” to accommodate women’s and farmers’ groups.³³³⁾ Another recent example is the adoption of a Personal Property Securities Act by Samoa earlier in 2013.³³⁴⁾

328) Asia Development Bank, above n 197.

329) Asia Development Bank, above n 21, p. 37.

330) Niazi, above n 46.

331) UNCITRAL Report, above n 315, [4.1]

332) Id. [4.2].

333) Id., [4.4].

334) Id., [3.1].

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b. United Nations Agencies

- 1) The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) is based in Thailand. The Enhanced Integration Framework (EIF) is a body based in Switzerland but managed by the UN Office for Project Services. In partnership with the IMF, ITC, UNCTAD, UNDP, World Bank, and the WTO and AusAID, it helps develop trade structures and provides technical assistance in Kiribati, Samoa, Solomon Islands, Timor Leste, Tuvalu and Vanuatu. Again, the need for technical assistance in the implementation and adoption of uniform texts falls within these criteria.³³⁵⁾

c. World Bank

- 1) The World Bank manages the distribution of aid, and is active in law reform in the region. An example is its role in the provision of Australian aid to Laos PDR through the Trade Development Facility.³³⁶⁾

d. Japanese International Cooperation Agency

- 1) Kitagawa criticizes the “forcing” of a choice upon developing nations between competing models of donor Western law reform, such as European-style codification and American-style piecemeal reform, and says that “it is unclear at the moment how helpful Western donor systems really are to developing nations”.³³⁷⁾ Appetite for assertion of the “presence of Japanese law” in the region has grown, leading to the growing activity of Japanese organizations in the region.³³⁸⁾ Kitagawa

335) Id., [4.5].

336) Id., [3.1].

337) Kitagawa, above n 51 , p. 255.

338) Akira Kamo, “Crystallization, Unification, or Differentiation? The Japanese Civil Code (Law of Obligations) Reform Commission and Basic Reform Policy (Draft Proposals)” (2010-11) 24 *Columbia Journal Asian Law* 171, p. 185.

points to the contributions of JICA, the Japan International Cooperation Agency, and the International Cooperation department of Research and Training Institute of the Japanese Ministry of Justice, as an exception to the trend of Western style legal reforms.³³⁹⁾

- 2) JICA in conjunction with the Japanese Ministry of Justice has been influential in helping reform the Civil Code and Civil Procedural Code of Cambodia, and the Civil Code of Viet Nam which came into force in 2006.³⁴⁰⁾ JICA has also been active in Myanmar.

E. Regional Harmonization Efforts in Contract Law

In an effort to establish an Asian answer to the soft law instrument known as the Principles of European Contract Law (PECL), regional scholars have worked towards drafting the Principles of Asian Contract Law (PACL). Like the PECL, this work is in many ways related to and modelled on the CISG as its starting point.³⁴¹⁾ Work is continuing on this project. The PACL will form a soft law. Many believe that PACL will ultimately complement the CISG, rather than compete with it, but this remains to be seen.³⁴²⁾ and could act as something of a conceptual ‘bridge’ between the CISG and Unidroit Principles for regional domestic laws.

339) Id., p. 185.

340) Id.

341) Shiyuan Han, ‘Principles of Asian Contract Law: An Endeavor of Regional Harmonization of Contract Law in East Asia’ (2013) 58 *Villanova Law Review* 589

342) Id.; Ingeborg Schwenzer, ‘Who Needs a Uniform Contract Law, and Why?’ paper delivered to the New York Bar Association, <http://www.nysba.org/Sections/International/Seasonal_Meetings/Vietnam/Program_4/Who_Needs_a_Uniform_Contract_Law_.html>.

F. Conclusions

It is highly recommended that, in regard to facilitation of trade and improving cross border efficiencies for trade in goods, the possibility of a commitment to CISG accession be raised in future RTA negotiations, whether bilateral or multilateral. Such discussions would ensure that the potential gains in efficiency discussed in this report in Chapter V (economic benefits for member state trade) and Chapter IV (efficiencies for individual traders) are heightened within the region.

Furthermore, it is important that the need for technical assistance in implementing and adopting uniform texts like the CISG be recognized and provided in countries in the Asia Pacific where the necessary resources and expertise are lacking. To ensure maximum economic benefits, adoption must be followed by an extensive program of capacity building through seminars, training and education, so that the potential benefits of uniform law are appreciated and the uniform law utilized.

VII. Influence on Domestic Law in Asia and the Pacific

A. Introduction

It should not be forgotten that the CISG has an impact beyond its mere function as a law for international sales. It also acts as a model for domestic contract law reform. This can be so even in countries that have not formally joined the CISG.³⁴³⁾ This Chapter briefly considers this impact of the CISG.

B. Outside the Asia Pacific Region

Throughout Europe, many jurisdictions have taken the CISG, sometimes coupled with parts of the Unidroit Principles, as the basis for their sales and/or contract law reform at the domestic law. Assimilation in domestic legislation is obvious in countries such as Russia, Estonia, Norway, Sweden, Germany, and China (see below).³⁴⁴⁾ The CISG also had influence in Greek and Dutch law, and the present CESL (Draft European Sales Law). In some cases it has simply been adopted as the law applicable to domestic sales.³⁴⁵⁾

One of the major reforms has been the German Law of Obligations 2001 took its cue from the CISG, and has been influential in sparking Japanese reform (discussed below).

343) In a process referred to by Sono as “assimilation”: Sono, above n 91, p. 165.

344) Id.; Peter Schlechtriem, ‘Basic Structures and General Concepts of the CISG as Models or a Harmonization of the Law of Obligations’ (2005) 10 *Juridica International* 27; Franco Ferrari, ‘The CISG and its Impact on National Legal Systems - General Report’ in Ferrari (ed), *The CISG and Its Impact on National Legal Systems* (Sellier, 2008). 413, at 474-478.

345) For example, in the New Zealand territory of Tokelau Islands: Schlechtriem, above n 344, p. 30; Sono, above n 91, fn 4, p. 166.

C. Within the Asia Pacific Region

a. Japan

- 1) Japan's Civil Code in relation to contracts is currently undergoing an extensive reform. This was triggered by a number of events: the strong connection between Japanese and German law meant that the 2001 German Law of Obligations was influential in triggering the present reform; as did the accession of Japan to the CISG in 2008.³⁴⁶⁾ The Committee drafting the new Code is not uncontroversially comprised of academics,³⁴⁷⁾ and its proposals for comprehensive overhaul of the law has been the subject of criticism, especially from practitioners, who felt more narrow reforms should suffice.³⁴⁸⁾
- 2) It was argued that the 1890 Civil Code was outdated,³⁴⁹⁾ and that its interpretation had long since been developed by the courts in a way not reflected in the Code's provisions.³⁵⁰⁾ Consequently, its original design made it difficult for ordinary people to understand the law of contract.³⁵¹⁾ It was also thought it was not ideal to have very different laws for domestic and international contracts, following the adoption of the CISG.³⁵²⁾
- 3) Thus accessibility, internationalization and modernization have driven the reform agenda in Japan. Subsequently, it has been argued by the proponents of the reforms that the reforms should reflect international principles, and that any divergence from this in Japanese domestic law

346) Kamo, above n 338, p. 184.

347) *Id.*, p. 176.

348) *Id.*, p. 175.

349) *Id.*, p. 173.

350) Sono, above n 91, p.175; *Id.*, pp 173, 187, 190.

351) Kamo, above n 338, pp 173, 187, 190.

352) *Id.*, p. 184.

should first be justified as necessary due to Japanese conditions.³⁵³⁾ In many ways, it can be seen that proposed draft provisions are similar to the solutions offered by the CISG and/or Unidroit Principles. For example, the principles relating to cancellation, although differing in some respects, resemble the fundamental breach provisions of the CISG in a manner that shows the “obvious influence of the CISG.”³⁵⁴⁾ Further, the scope of damages is assessed at the time of the breach, in line with Unidroit Principles.³⁵⁵⁾ The Committee’s Interim Report was finalized 26 February 2013, and its Final Report is “expected by March 2014, leading to a reform Bill being introduced into Parliament in late 2014 or early 2015”.³⁵⁶⁾

- 4) However, even before the CISG had its present overt effect in the form of revision of Japanese domestic law, its influence was being felt by the assimilation of its principles of *favour contractus* in the interpretation of Japanese contract law.³⁵⁷⁾ Notably, this process began even before formal accession to the CISG by Japan.

b. China

- 1) It is widely known that after a long comparative study, China adopted its domestic contract law, the PRC Contract Law 1999. It is “clear that the CISG has had an impact on the Chinese Contract Law”.³⁵⁸⁾ Its

353) Id., p. 184, 187, 195 (proponents “the BRP contains proposals that conform to international trends”).

354) Sono, above n 91, p. 176. See also, Id., p. 197.

355) Kamo, above n 338, p. 195 (per Art. 7.4.4). See also Takashi Uchida, ‘Contract Law Reform in Japan and the UNIDROIT Principles’ (2011) 16(3) *Uniform Law Review* 705

356) Luke Nottage, Japanese Law Blog, <<http://blogs.usyd.edu.au/japaneselaw/2013/06/minpo.html>>.

357) Sono, above n 91, p. 166, 173-175.

358) Shiyuan Han, “The Avoidance of Contract under the CISG: Some Comparative Remarks from a Chinese Perspective” in Schwenger and Spagnolo (eds), *Globalization*

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structure and rules closely follow those of the CISG and Unidroit Principles, with some small differences. Even in these instances differences are often more apparent than real. For example, although a right of cure is not mentioned, it may effectively arise through the Chinese principle of good faith.³⁵⁹⁾

- 2) Another difference concerns the definition of fundamental breach.³⁶⁰⁾ Foreseeability is not a proviso required within Chinese fundamental breach in the PRC Contract Law (PRCCL) Art. 94(2)-(4), thus it is not quite as strict as the CISG.³⁶¹⁾ On the other hand, Chinese contract law requires that the breach not being performed be a “main obligation”: Arts 94(2) and (3) PRCCL.³⁶²⁾ Additionally, Chinese Contract Law diverges from CISG to follow the Unidroit Principles in still allowing a right of avoidance even where full restitution of the goods is not possible: Art. 97 PRCCL.³⁶³⁾ However, in most respects Chinese Contract Law follows the CISG.³⁶⁴⁾

c. South Korea

- 1) There are some notable differences between Korean sales law and the CISG. For example, the requirement of notice under Korean law does not apply to aliud, defects in title or excessive delivery.³⁶⁵⁾ This has in-

versus Regionalization (Eleven, 2012), p. 55.

359) *Id.*, p. 52.

360) *Id.*, pp 48-49. See also, Yan Li, *Remedies for Breach of Contract in the International Sale of Goods - A Comparative Study between the CISG, Chinese Law and English Law with reference to Chinese Cases*, (University of Southampton, Dissertation [Doctor of Philosophy] submitted May 2011).

361) Han, above n 358, p. 49.

362) *Id.*, p. 49.

363) *Id.*, p. 51.

364) For example, in relation to the no fault stance of the CISG, and excuse for non-performance: *Id.*, p. 48.

365) Lee Byung-Mung, ‘The Buyer’s Duty to Examine the Goods and Notify the Seller

roduced some fine distinctions which have drawn some criticism,³⁶⁶⁾ but its rules on timing and requirements of examination of goods are broadly similar to those of the CISG.³⁶⁷⁾ However, the Korean Civil Code requires fault in the form of intention or negligence for liability to arise: Art. 390 KCC.³⁶⁸⁾

- 2) An attempt was made in South Korea to reform the Korean Civil Code, but this was “stymied because of criticism from academic lawyers, [so that] discussion on law reform, which would have been completed within four years, [was only] resumed in 2009”.³⁶⁹⁾ The Korean reform process is said to attempting to “fill the gap between national law and the Convention”.³⁷⁰⁾

d. New Zealand

- 1) In New Zealand, the impact of the CISG upon domestic law has been through the development of contractual law principles in case law. In particular, contractual interpretation has been affected.
- 2) Through a series of cases, reference to Art. 8(3) CISG by various judges have been made, with comments to the effect that New Zealand should perhaps deviate from the stricter English interpretative method in order to follow “best international practice”.³⁷¹⁾

of Lack of Conformity under Korean Law in Comparison with the PELS and the CISG’ (2008) 12 *Journal of Korea Trade* 175, p. 182.

366) *Id.*, p. 182.

367) *Id.*, pp 183-5.

368) Chung, above n 104, p. 38.

369) Kamo, above n 338, p. 185.

370) Chung, above n 104, p. 31.

371) See for example, *Attorney-General v. Dreux Holdings Ltd* 49 (1996) 7 TCLR 617 (Court of Appeal, New Zealand); *Yoshimoto v. Canterbury Golf International Ltd* [2001] 1 NZLR 523 (Court of Appeal, New Zealand) [88], per Thomas J stating “It would, of course, be open to this Court to seek to depart from the law as applied in England on the basis of this country's implementation in 1994 of the [CISG]. Liberal provisions for

- 3) New Zealand courts have now recognized that subsequent conduct can be used in interpretation of the contract by reference to this notion of international best practice.³⁷²⁾ Although the matter is not yet settled, it seems clear already that the New Zealand Supreme Court is following a “path to interpret its domestic contracts in line with Article 8(3) of the CISG, [although] the issue of prior negotiations yet to be finally decided”.³⁷³⁾

e. Australia

- 1) Australian contract law is primarily contained within its case law. Its development has not yet felt much impact from the CISG, and there have only been some general references in case law to Art. 7(1) in relation to tentative development of limited duties of good faith in contract.³⁷⁴⁾ However, Australian contract law suffers from some inconsistencies across the various States and Territories of Australia, and in particular, its sales law, found in various individual pieces of State legislation, is essentially based on the English sale of goods statutes of 1873.
- 2) Consequently there have been calls at the Federal level for a reform of Australian contract law, to harmonize it across States and Territories and to consider modernizing and internationalizing the law. A Discussion Paper issued by the federal Attorney-General’s department in 2012 raised the possibility of looking to the CISG and Unidroit

the interpretation of international sales contracts are included in this Convention.”; *Thompson v Cameron* (27 Mar 2002) APII7/SW99 (High Court, Auckland, Chambers J).

372) *Attorney-General v. Dreux Holdings Ltd* 49 (1996) 7 TCLR 617 (Court of Appeal, New Zealand); (although this was not required for the ultimate decision, therefore obiter dicta).

373) Petra Butler, ‘The Use of the CISG in Domestic Law’ (2011) 3 *Belgrade Law Review* 7, p. 20.

374) Id.

Principles as guides to this process,³⁷⁵⁾ although the possibility and direction of any future reform process is, as yet, unclear.

D. Advantages of CISG as Model for Domestic Reform

Countries that use the CISG, possibly complemented by Unidroit Principles, as a basis for local reform obtain a number of advantages.

- 1) First, it shapes domestic law in a matter that parallels reforms in other parts of the world, so that foreign traders will find domestic conditions more palatable if the domestic law is chosen as the law of the contract in conjunction with CISG or solely, excluding CISG;
- 2) Secondly, given the outdated nature of many sales laws which linger from colonial times,³⁷⁶⁾ such reform tends to both modernize and internationalize domestic law;
- 3) Thirdly, we have seen the need for basic legal infrastructure in some Asian Pacific countries lacking resources. In these situations, proven models such as CISG can reduce the burden by providing useful starting blocks for such infrastructure, especially in conjunction with other uniform texts as a package;³⁷⁷⁾ and
- 4) Finally, it reduces information costs for lawyers and parties within the jurisdiction that deal with both domestic and international transactions. By ensuring a significant degree of harmonization between the law applicable to international sales (if joining as a CISG member state) and

375) Australian Federal Attorney-General, above n 16, pp 15-16.

376) For example, Indian contract law dates from 1872; Australian sales law is based on English law from the 19th century.

377) See discussion above regarding “whole package”, Chapter III.

domestic law (if modelled on CISG), information costs of becoming familiar with both are reduced with improvements for choice of law. As we have seen in Chapter 4, this tends to reduce suboptimal choices of law by ensuring that the CISG is not excluded where it is the more efficient choice for the transaction, capturing economic benefits for parties.

E. Conclusion

The CISG can be a very useful starting point for domestic legislators considering reform of domestic contract law. Like many Asian legal systems, the CISG blends civil and common law features.³⁷⁸⁾ It may therefore be particularly useful in the regional setting as a roadmap for reform.

³⁷⁸⁾ Bell, above n 81, (noting this feature leads to differences throughout Asian legal systems and that a similar problem was faced by the CISG drafters).

VIII. Conclusions and Recommendations

A. Overview

This report has demonstrated that the nature of legal systems within the Asia Pacific region are highly diverse, and shown the considerable degree of variation that exists between these systems in terms of the development of legal infrastructure. The Asia Pacific has been subject to many legal and cultural influences over time.

Furthermore, it was found that only a small proportion of Asian Pacific countries had joined the CISG at this stage - that is, just 7 of 35 states - 20%. Some reasons for this were presented, including the influence of Islamic law, lack of resources and political instability. Nonetheless, the vast diversity in the region and underdevelopment of legal infrastructure in some nations make it very likely that any economic benefits from greater harmonization of sales law would be magnified greatly in the Asia Pacific relative to other regions.

In this report, it was concluded that the CISG can reduce transaction costs for contracting parties. This is because it employs an efficient design for cross-border trade. In particular, it comprises a design that is far more suited to international trade than many outmoded domestic transactions which were formulated for domestic law, and provides greater accessibility and neutrality for trade. It potentially lowers costs at both the contracting stage, as well as at the stages of performance and dispute resolution.

The rates of exclusion in various jurisdictions were presented, and the reasons for its exclusion by contracting parties were outlined. In particular, it was noted that most exclusions were due to lack of familiarity and learning costs, both of which can be addressed by measures designed to ensure lawyers and judges become more comfortable with the CISG.

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The vast influence of China on regional trade and the preference of Chinese counterparties for use of the CISG was considered to be likely to increase exposure to the CISG over time. To this end, it was noted that exclusion is becoming less common globally, including in the USA which was a jurisdiction that previously had high exclusion rates. This is presumably due in large part to trade with China.

In addition to the potential benefits to contracting parties, the report attempted to test the possibility that the CISG has a beneficial effect on the economies of the countries adopting it. Although the severe limitations of such testing were noted, particularly in a small scale study such as that performed in this research, the results are not inconsistent with the possibility of such benefit being obtained: indeed, they are consistent with the hypothesis that the CISG is beneficial to trade. Unfortunately, this cannot be stated conclusively on the basis of the results, and a broader study is recommended.

The possibility that the adoption of the CISG might spur other nations in a region to join was also tested, and this theory, which was referred to as the “geography hypothesis”, was inconclusive. While the European situation supports this theory, other regions are less clear. Explanations of this difference are possible, one being based on the variance in development of legal systems. This might explain why adoption of the CISG has been slower in the Asia Pacific. Nonetheless, the accession in recent times of Japan and South Korea might be expected to have some influence on its adoption elsewhere in the region.

The proliferation and role of regional trade agreements was also considered in this report, as was the role of significant legal aid providers in the region. Given the potential for significant benefits by adoption of the CISG, it is suggested that both can be harnessed to a greater degree to encourage accession.

Furthermore, the large influence the CISG has had on domestic law reform globally, and within the region was outlined. As there are many countries within the region with either underdeveloped or outmoded contract laws, the benefits of modernization and internationalization are considerable. Indeed, best results in many cases could be achieved by a synchronization between the law applicable to both domestic and international transactions.

B. Final Recommendations

The following practical measures may heighten the benefits of the CISG in the region:

- 1) Encouragement of further accessions to the CISG in the other 80% of countries in the Asia Pacific region through the introduction of CISG membership as a goal in regional trade agreement negotiations such as the TPP and bilateral treaties;
- 2) Continued and further provision of legal technical assistance to nations lacking resources that wish to develop their laws relating to international and domestic contracts;
- 3) The provision of targeted and professional legal capacity-building resources to nations considering adoption of the CISG, to reduce the likelihood of its underutilization once adopted;
- 4) Introduction of measures to improve knowledge of the CISG within member states to ensure its maximum benefits are realized, including the following:
 - Ensure professional entry qualification exams (bar exams) include knowledge of the CISG as a fundamental part of examinable material;
 - Require university law courses to include the CISG in the curriculum, preferably within compulsory courses on contract law;
 - Provide legal training to practising lawyers and judges; and

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- Encourage professional bodies to run seminars about the CISG.

Further studies will help improve knowledge and awareness of the benefits of the CISG. It is therefore suggested that consideration should be given to future research in relation to the following:

- 1) As yet, no large study exists on use of the CISG in the Asia Pacific region. A careful large scale empirical study could be conducted in relation to lawyer behaviour regarding exclusion of the CISG. However, caution must be exercised in relation to the study design:
 - To ensure the data will be of maximum benefit in identifying exclusion trends and reasons for behaviours; and
 - So that the results of the survey can be compared with as many of the earlier studies as possible.
- 2) Additionally, a larger econometric study in relation to the economic benefits of the CISG for the region could be undertaken. Recommendations for this are:
 - Use of a greater number of trade indicators to provide more data to help isolate the effect of the CISG on trade. This would provide a better and more nuanced picture of the impact to more easily detect any significant relationship between the CISG and trade; and
 - An analysis of particular countries' trading partners and how this composition changes over time to allow for the detection of any relationship between the composition of trading partners and the adoption of the CISG. This will enable the testing to establish whether or not parties in one country might be more inclined to trade with parties in CISG countries.

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- Japan-Indonesia Bilateral Trade Agreements*

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Appendix 1: Statistical Data for Asia Pacific Trade and Impact of CISG

Appendix 1 comprises Tables in PDF form, provided separately to KLRI, and which are on file and available from the author upon request. For further information, contact lisa.spagnolo@monash.edu.

Appendix 2: Stastical Studies on Exclusion of CISG

USA Studies:

- (1) **Peter L Fitzgerald**, 'The International Contracting Practices Survey Project'(2008) 27 *Journal of Law & Commerce* 1, 67, Question 11. Fitzgerald's study allows an inference with 80% confidence of 46-64% of US lawyers 'typically' opting out.
- (2) **George V Philippopoulos**, 'Awareness of the CISG Among American Attorneys' (2008) 40 *UCC Law Journal* 357, 361, 363. Working backwards from the alternative responses, it appears that 61% of respondents preferred to opt out. This allows an inference with 80% confidence of 52-70% of US lawyers preferring to opt out.
- (3) **Martin F Koehler**, 'Survey regarding the Relevance of the United Nations Convention for the International Sale of Goods (CISG) in Legal Practice and the Exclusion of its Application' (October 2006) 1 <<http://cisgw3.law.pace.edu/cisg/biblio/koehler.html>>. Koehler's study allows an inference with 80% confidence of 62-79% of US lawyers generally opting out.
- (4) **Michael Wallace Gordon**, 'Some Thoughts on the Receptiveness of Contract Rules in the CISG and UNIDROIT Principles as Reflected in One State's (Florida) Experience of (1) Law School Faculty, (2) Members of the Bar with an International Practice, and (3) Judges' (1998) 46 (*Suppl*) *American Journal of Comparative Law* 361, 368. As sample size is unknown, confidence levels cannot be inferred. Gordon states half of the 32% surveyed who claimed reasonable or good knowledge of the CISG had opted in or out.

German Studies

- (1) **Justus Meyer**, ‘The CISG in Attorneys’ Every Day Work’ (2009) 6, Question 4, Tables 4A-4C (draft paper on file with author), published in German: Justus Meyer, ‘UN-Kaufrecht in der deutschen Anwaltspraxis’ (2005) 69 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 457. Note some respondents gave multiple answers: email correspondence with Justus Meyer (on file with author).

Meyer’s result gives an inference of 41-49% with 90% confidence.

- (2) **Martin F Koehler**, see ‘USA (3) above’ (link to Chart ‘Frequency of Exclusion of the Convention’); and **Martin F Koehler and Yujun Guo**, ‘Combined Charts (Survey Germany USA China) - Frequency of Exclusion’ (2008)(spreadsheet on file with author). At an 80% confidence level Koehler’s study yields an inference of 63-83% of German lawyers generally opting out.

Swiss Studies

- (1) **Justus Meyer**, (see *German Studies (1)*, above) Question 4, Tables 4A-4C, previously published in German: Justus Meyer, ‘UN-Kaufrecht in der schweizerischen Anwaltspraxis’ (2008) 104 *Schweizerische Juristen-Zeitung/Revue suisse de jurisprudence* 421; email correspondence with Justus Meyer (on file with the author). Note some respondents gave multiple answers. The Meyer result yields an interval of just 37-45% with 90% confidence given the larger sample, therefore the Meyer study is primarily relied upon here.
- (2) **Corinne Widmer and Pascal Hachem**, ‘Switzerland’ in Franco Ferrari (ed), *The CISG and Its Impact on National Legal Systems* (Sellier, 2008)

281, 285, 286. Although responses were received from 170 lawyers, 17 were not involved in international sales: at 282. With 90% confidence, the Widmer-Hachem result indicates an interval of 55-69% of the population.

Austrian Studies

- (1) **Justus Meyer**, (see *German Studies (1)*, above), 6, Question 4, Tables 4A-4C, previously published in German: Justus Meyer, 'UN-Kaufrecht in der österreichischen Anwaltspraxis' (2008) 63 *Österreichische Juristen-Zeitung* 792; email correspondence with Justus Meyer (on file with author). Some respondents gave multiple answers. Meyer's result predicts 50-60% of Austrian lawyers normally opt out with 90% confidence.

Chinese Studies

- (1) **Martin F Koehler and Yujun Guo**, 'The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems - An International Comparison of three Surveys on the Exclusion of the CISG's Application Conducted in the United States, Germany and China'(2008) 20 *Pace International Law Review* 45. The Koehler and Guo survey only allows an inference of 27-47% with poor level of 70% confidence. Normality of the sample can be presumed because both $n \hat{\pi}$ and $n(1-\hat{\pi}) > 5$: 9.99 and 17.01 respectively. Koehler and Guo found 52% of Chinese lawyers surveyed seldom or never opt out: § II. With 80% confidence this indicates at least 39% and up to 64% of Chinese lawyers seldom or never opt out. Comparatively, Koehler found 21% of US practitioners and 18% of German practitioners surveyed never or seldom opt out: Koehler, (see

‘German Studies (2)’ above) (link to Chart ‘Frequency of Exclusion of the Convention’). The later results allow us to infer with 80% confidence that no more than 25% of German lawyers and no more than 29% of the population of US lawyers seldom or never opt out because a normal sample can be assumed in each case as both $n \hat{\pi}$ and $n(1-\hat{\pi}) > 5$ for the US (10.08, 37.92) and for Germany (5.94, 27.06).

Global Studies

(1) **Ingeborg Schwenzer, Pascal Hachem and Christopher Kee**, *Global Sales and Contract Law* (Oxford University Press, 2012), Chapter 5, also published as Ingeborg Schwenzer and Christopher Kee, ‘Global Sales Law – Theory and Practice’ in Ingeborg Schwenzer and Lisa Spagnolo (eds), *Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference* (Eleven International Publishers, 2011); Ingeborg Schwenzer and Christopher Kee, ‘International Sales Law – The Actual Practice’, *Penn State International Law Review* (2011) 433 §III.C. Given the sample sizes involved for respondents from Contracting States (correspondence 6 March 2012, on file with the author) these figures allow population inferences with confidence levels of 80% of + 3.8%, + 3.8%, and + 5.7% respectively. From the sample sizes involved (correspondence 6 March 2012, on file with the author) it can be stated for total respondents indicating they were ‘familiar’ or ‘somewhat familiar’ of 78% a population inference can be drawn of + 2.9% with 80% confidence. Similarly, the result for lawyers from Contracting States of 84% ‘familiar’ or ‘somewhat familiar’ allows a population inference of + 3.1% with 80%.

Appendix
CISG Imports (% of GDP)

Country/Territory	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Austria	14.77	13.41	14.69	14.63	15.40	15.95	16.76	16.86	15.66	15.03	15.31	15.13	15.16	15.65	17.00	17.10	16.22	16.45	17.01
Algeria					22.71	21.51	23.88	20.81	19.38	18.05	15.07	19.22	17.50	19.22	20.72	23.20	22.59	22.59	22.59
Argentina	5.96	5.92	7.33	5.72	6.33	6.46	7.37	6.52	5.84	4.76	6.27	7.58	6.21	6.58	6.53	6.08	6.08	8.13	9.31
Armenia																			
Australia	29.38	32.12	33.31	31.49	33.43	36.21	36.48	33.37	32.97	34.86	36.24	33.00	32.41	34.52	36.61	36.89	36.54	35.53	32.77
Belarus																			
Belgium	68.79	52.69	52.69	50.82	56.39	57.79	61.31	65.41	65.50	69.67	67.06	60.09	60.09	62.24	67.00	65.34	68.71	61.62	57.26
Benin	33.41	31.03	34.78	34.55	37.02	37.32	43.96	40.09	31.58	30.93	36.65	32.62	30.95	32.08	24.80	26.54	30.34	33.50	32.92
Bosnia and Herzegovina																			
Brazil	11.51	9.43	7.02	7.86	9.18	11.31	9.80	8.27	9.01	7.92	7.10	6.35	6.19	5.69	5.46	6.96	7.01	8.39	9.10
Bulgaria																			
Burkina Faso																			
Burundi	19.00	16.65	17.29	20.73	22.72	23.29	27.04	26.91	24.75	23.55	20.79	22.32	25.74	25.95	27.94	27.78	28.51	29.48	27.36
Canada	26.19	22.86	23.86	24.68	26.32	26.23	26.19	21.80	22.20	25.96	26.88	25.64	25.95	25.65	25.68	25.68	25.69	27.47	30.21
Chad	27.41	20.80	22.42	23.93	26.11	26.98	26.75	21.25	25.44	25.71	26.03	27.25	27.25	27.25	27.25	27.25	27.25	28.17	28.62
China	4.57	4.47	4.32	7.07	9.94	11.01	12.07	9.30	10.39	13.29	12.48	14.38	16.15	15.34	13.09	13.09	14.31	17.47	22.33
Colombia	14.07	13.90	13.27	13.74	13.46	15.58	15.43	15.18	13.23	12.47	12.53	11.99	12.92	13.86	13.82	13.82	13.91	15.76	18.76
Croatia																			
Cuba	44.19	44.19	44.18	44.15	44.14	44.28	44.20	44.15	43.98	44.11	44.97	43.78	43.92	43.11	44.76	40.88	29.06	18.23	15.72
Cyprus	56.69	62.62	67.76	62.92	63.77	63.07	63.37	64.24	63.97	67.10	58.83	48.47	50.27	53.50	59.87	57.11	57.09	60.64	47.93
Czech Republic																			
Denmark	31.89	34.30	33.39	30.93	33.31	34.83	36.64	36.93	35.51	36.63	37.69	34.32	31.44	32.02	33.54	32.55	33.11	31.61	30.67
Dominican Republic	30.02	28.19	24.18	24.17	26.29	28.94	25.02	19.25	18.30	32.84	37.10	33.46	37.42	41.75	44.53	43.60	43.06	44.00	42.05
Ecuador	19.33	17.98	18.14	18.56	18.17	17.88	15.30	17.68	15.32	15.68	16.04	17.48	22.36	23.66	24.83	21.83	21.52	20.67	23.14
Egypt, Arab Rep.	41.28	34.00	33.20	37.02	48.34	42.87	48.80	41.03	36.43	35.81	32.04	25.59	22.77	35.16	32.35	32.71	35.80	30.91	30.09
El Salvador																			
Estonia																			
Ethiopia	28.54	26.03	25.85	25.06	26.88	32.51	30.69	29.04	29.11	27.51	27.76	24.74	24.89	24.61	25.27	24.08	22.62	25.16	27.26
Finland	47.90	46.10	51.76	46.92	37.40	31.63	40.70	39.67	43.54	40.20	52.78	54.70	45.27	41.79	41.20	30.86	33.27	33.79	34.55
Gabon	17.84	20.26	20.36	19.51	20.70	22.08	23.94	24.40	23.22	24.25	24.26	21.00	21.22	21.57	22.03	22.37	22.22	21.21	19.58
France	20.30	21.92	21.73	23.52	21.10	23.11	25.09	25.97	25.30	26.47	26.97	23.38	22.68	23.15	24.74	24.86	25.08	24.42	21.82
Germany	25.57	25.15	24.97	23.02	20.58	30.50	31.05	29.75	29.82	29.09	29.28	28.07	28.07	28.13	29.89	30.00	29.45	28.91	27.74
Ghana	39.68	38.17	39.26	40.30	41.37	44.06	37.70	28.05	20.23	32.03	29.87	28.31	25.83	28.03	34.34	30.95	37.58	36.28	43.70
Honduras	48.81	42.53	45.54	47.53	44.53	41.25	40.58	37.06	38.35	37.92	40.13	41.05	38.35	34.04	32.71	28.33	33.91	31.88	34.80
Hungary	41.63	34.15	33.68	33.55	36.77	35.47	36.08	36.89	37.52	38.04	40.07	34.72	35.31	32.85	32.33	32.53	32.53	30.38	29.61
Iceland																			
India	67.32	65.03	65.64	76.00	71.51	69.34	69.96	57.69	53.41	55.13	53.27	52.35	57.10	48.36	45.72	45.38	45.37	44.34	48.57
Indonesia	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73	31.73
Iran	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57	11.57
Ireland	35.41	32.01	31.21	32.15	33.65	39.97	39.67	35.75	34.07	33.64	31.38	30.58	31.20	29.28	28.74	28.30	27.75	25.14	25.14
Israel																			
Italy																			
Japan																			
Jordan																			
Korea Rep.																			
Kuwait																			
Kyrgyz Republic																			
Latvia																			
Lebanon																			
Lesotho	103.98	138.63	112.43	90.60	123.63	110.09	117.01	150.98	149.89	157.87	145.15	132.75	132.44	140.80	122.36	146.37	154.26	134.26	126.15
Lithuania	64.19	74.78	77.55	76.49	72.16	71.84	66.26	64.70	61.45	50.21	47.57	43.88							
Luxembourg	82.70	77.20	77.74	77.36	81.59	83.82	84.10	85.15	84.59	93.36	97.15	89.40	90.09	90.01	89.33	88.22	89.19	84.07	82.65
Macedonia, FYR																			
Mauritania	60.40	77.80	73.57	64.85	99.79	66.66	74.95	84.70	78.14	80.79	79.31	66.58	63.03	63.03	58.74	60.73	40.94	42.22	45.06
Mexico	9.62	9.87	10.22	11.04	12.25	12.97	12.94	10.32	9.42	9.55	10.33	13.43	13.88	18.54	19.06	19.71	19.27	20.27	19.17
Morocco																			
Montenegro																			
Mozambique																			
Netherlands	46.40	46.65	45.94	44.87	49.54	52.42	51.03	52.63	53.29	55.33	57.91	49.17	49.04	51.19	54.12	52.65	53.05	51.59	49.15
New Zealand	30.38	29.59	28.11	26.24	30.61	30.34	31.47	31.29	30.14	35.02	32.03	26.56	24.27	22.54	26.03	26.28	25.89	28.52	27.38
Norway	42.29	44.78	43.85	36.01	37.33	37.15	35.98	36.36	33.95	34.04	35.39	37.69	34.63	33.65	34.47	33.78	32.06	31.14	31.52
Paraguay																			
Peru	21.94	20.23	22.72	20.08	19.09	19.42	19.70	19.54	19.30	15.41	16.46	15.33	12.72	22.61	12.25	14.83	14.49	15.61	16.02
Poland																			
Romania																			
Russian Federation																			
St. Vincent and the Grenadines																			
San Marino																			
Serbia	146.52	156.57	164.47	169.50	190.72	209.55	202.21	187.97	166.99	157.60	152.82	146.47	161.61	175.63	168.44	167.38	149.93	152.09	152.09
Slovak Republic																			
Slovenia	16.30	17.08	15.52	13.50	13.78	16.84	18.63	19.07	20.18	19.74	19.51	16.73	18.34	18.93	20.27	19.40	19.30	18.77	18.77
Spain	27.65	28.60	28.34	26.52	30.63	30.92	29.99	32.84	33.56	32.76	33.62	29.63	30.47	30.35	31.25	29.78	26.47	26.31	29.03
Sweden																			
Switzerland	34.63	34.97	41.46	34.84	36.71	36.13	35.62	35.62	35.62	36.01	36.85	34.39	33.86	34.91	37.13	34.95	33.19	32.08	30.92
Syrian Arab Republic	11.23	10.67	10.71	7.29	5.88	11.93	12.90	15.02	16.56	19.67	18.97	16.10	17.76	17.55	17.58	17.58	16.63	17.35	19.34
Tanzania	50.92	9.61	7.80	18.86	17.53	26.03	22.06	37.52	13.64	14.33	15.01	15.24	18.04	17.78	18.09	19.37	21.94	24.29	21.18
Ukraine																			
United States	7.56	8.35	9.06	9.32	9.94	10.62	10.24	9.37	10.39	10.39	9.97	10.24	10.83	10.94	10.86	10.95	10.51	10.66	10.94
Uruguay	20.28	20.08	22.66	21.15	21.1														

Appendix
CISG Imports % of GDP

Country/Territory	1994	1995	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Austria	18.47	19.30	18.91	20.35	20.57	21.38	21.88	20.58	11.00	10.63	20.65	21.17	21.11	21.07	22.14	20.03	19.65	21.17
Algeria	38.95	34.51	36.74	34.37	32.03	37.49	38.71	40.72	45.87	43.31	46.33	54.96	50.12	50.12	53.51	53.88	56.00	54.62
Argentina	10.60	10.08	11.07	12.77	11.53	11.52	10.21	12.90	14.20	18.17	19.19	19.23	20.94	20.65	16.00	18.40	19.53	16.54
Armenia	71.10	62.10	55.99	58.27	52.84	49.80	50.54	46.15	46.50	50.04	43.23	39.25	39.15	40.66	43.00	46.32	48.61	48.85
Austria	34.96	35.79	37.04	39.76	40.31	40.88	44.48	45.88	43.92	44.75	47.71	49.85	51.30	53.17	45.56	48.91	53.97	53.84
Belarus	84.10	54.05	50.42	65.66	63.91	61.63	72.40	70.30	67.37	68.99	74.25	59.09	69.23	68.66	61.78	67.89	83.07	78.32
Belgium	61.43	62.08	66.02	66.80	65.80	75.21	74.21	70.96	68.63	71.02	74.74	76.96	78.70	84.08	70.07	77.64	84.08	83.69
Benin	36.07	36.43	30.02	31.54	29.75	30.89	30.96	30.96	31.05	28.63	28.55	27.74	28.36	27.50	25.10	24.65	26.06	26.96
Bosnia and Herzegovina	86.10	71.47	83.88	72.80	98.36	91.18	75.50	70.93	83.47	77.50	71.68	65.96	79.87	77.76	54.40	56.09	64.28	66.70
Brazil	9.16	8.77	8.37	9.02	10.82	11.74	13.50	12.56	12.08	12.55	11.82	11.47	11.94	13.47	11.14	11.90	12.62	13.91
Bulgaria	45.67	40.91	56.81	53.41	58.08	69.58	55.80	58.14	50.89	46.62	55.63	48.80	48.89	49.91	51.56	43.74	44.78	50.12
Burkina Faso	34.82	34.13	34.36	37.53	39.44	39.52	39.83	37.80	37.45	34.36	34.11	34.08	33.02	33.02	33.69	30.43	31.31	31.63
Canada	26.57	27.10	28.97	29.20	29.57	27.33	28.58	30.54	31.20	30.40	31.40	31.59	29.56	32.00	29.60	31.73	34.36	32.89
China	10.95	14.58	18.00	17.28	16.95	17.52	20.02	20.48	22.56	31.40	31.55	31.43	20.61	20.26	22.30	26.70	27.29	27.29
Colombia	20.92	20.36	20.84	20.76	20.80	17.80	18.17	18.51	19.94	19.09	18.78	20.54	17.65	17.26	18.25	17.76	19.79	19.50
Croatia	45.92	41.54	42.52	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88	42.88
Cuba	14.54	15.91	17.31	17.83	18.25	17.33	16.95	16.13	13.20	13.64	15.29	18.34	18.47	17.63	24.35	14.91	18.96	43.36
Cyprus	48.09	50.09	53.67	54.37	50.74	50.81	53.92	52.31	48.21	48.21	50.89	51.76	54.70	56.19	46.19	46.56	48.56	48.56
Czech Republic	45.68	51.71	51.68	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31	46.31
Denmark	32.44	31.44	32.92	35.06	36.06	35.61	40.47	40.55	41.35	39.05	40.45	44.08	48.89	49.91	51.56	43.74	44.78	50.12
Dominican Republic	41.56	39.32	38.16	40.20	43.55	43.32	45.87	41.00	43.42	41.56	35.50	37.08	37.87	39.21	30.25	34.22	35.29	35.73
Ecuador	23.50	24.62	21.84	23.48	25.50	22.82	27.34	27.52	27.88	24.61	26.11	28.48	29.38	30.66	33.89	26.86	33.67	33.96
Egypt Arab Rep.	28.06	27.70	26.20	24.90	25.71	23.31	22.82	22.32	22.67	24.33	29.59	32.61	31.57	34.83	38.64	31.60	26.13	30.05
El Salvador	35.21	37.76	33.93	37.55	37.08	42.43	41.63	41.08	42.87	45.08	44.16	46.17	48.29	49.70	38.67	43.21	46.56	46.61
Estonia	75.64	72.86	72.86	82.61	84.59	75.35	88.20	82.30	78.29	76.68	80.13	84.22	82.95	76.30	75.09	59.30	72.70	87.57
Finland	29.09	28.99	30.23	31.36	30.50	29.69	34.44	32.14	31.29	31.88	33.34	37.67	40.77	40.69	35.71	39.00	41.50	40.34
France	38.25	35.75	33.01	37.23	38.12	35.67	33.04	34.34	31.83	32.02	27.70	31.81	32.88	29.05	25.20	27.80	29.86	29.86
Germany	109.13	42.33	32.37	42.14	37.11	38.10	39.67	38.87	42.40	46.02	48.18	51.57	57.02	57.95	58.40	48.93	52.76	54.86
Greece	26.22	27.38	23.84	26.11	27.21	23.82	32.81	31.17	31.80	33.51	36.10	39.89	40.17	41.85	37.47	41.44	45.10	45.96
Guinea	25.96	24.53	24.35	22.95	26.92	28.96	30.02	28.97	25.19	25.82	35.11	47.68	36.42	40.08	30.79	36.53	48.12	65.78
Honduras	49.36	48.08	51.97	51.82	54.08	55.98	66.42	64.56	65.27	68.15	77.04	77.48	81.56	84.42	59.69	64.61	68.76	69.07
Hungary	35.39	44.91	48.90	54.14	64.02	67.13	74.05	65.10	65.25	68.95	68.65	78.68	80.41	81.21	72.73	80.04	85.72	85.72
Iceland	30.61	31.91	35.68	35.71	38.16	38.27	40.93	39.86	37.35	39.89	44.00	45.31	47.17	44.74	44.74	48.27	50.80	52.87
India	45.96	35.69	34.27	32.66	35.69	37.47	35.48	37.93	37.40	41.41	43.09	42.48	43.93	41.57	43.28	34.92	37.76	37.76
Italy	10.07	11.97	13.16	14.73	15.46	16.42	17.43	18.43	19.43	20.43	21.43	22.43	23.43	24.43	25.43	26.43	27.43	28.43
Japan	7.01	8.14	9.46	10.78	12.10	13.42	14.74	16.06	17.38	18.70	20.02	21.34	22.66	23.98	25.30	26.62	27.94	29.26
Korea Rep.	22.38	20.92	21.34	23.00	23.38	25.71	23.48	23.66	23.84	24.02	24.20	24.38	24.56	24.74	24.92	25.10	25.28	25.46
Kyrgyz Republic	40.79	42.36	44.94	47.52	50.10	52.68	55.26	57.84	60.42	63.00	65.58	68.16	70.74	73.32	75.90	78.48	81.06	83.64
Latvia	44.39	44.87	45.35	45.83	46.31	46.79	47.27	47.75	48.23	48.71	49.19	49.67	50.15	50.63	51.11	51.59	52.07	52.55
Lebanon	62.40	62.33	55.25	47.55	40.85	36.75	33.96	31.94	30.92	30.90	30.88	30.86	30.84	30.82	30.80	30.78	30.76	30.74
Lithuania	121.85	121.45	120.14	125.15	150.66	138.47	134.73	136.54	143.71	139.37	120.87	119.09	118.00	120.53	112.37	110.55	105.90	108.02
Luxembourg	61.40	57.97	59.17	61.58	66.81	61.67	56.87	52.07	50.92	50.92	50.92	50.92	50.92	50.92	50.92	50.92	50.92	50.92
Luxembourg	88.47	85.10	90.90	103.69	111.05	115.01	128.99	121.07	113.22	128.15	130.32	139.07	143.63	151.75	131.36	140.27	146.27	140.52
Mauritania	44.77	38.52	50.85	56.09	52.15	63.52	56.61	58.16	54.50	60.06	61.14	64.46	70.80	69.20	61.04	65.27	74.09	78.85
Mexico	55.80	64.52	68.99	60.21	38.99	36.62	45.30	46.63	46.81	46.81	46.81	46.81	46.81	46.81	46.81	46.81	46.81	46.81
Mexico	21.60	27.00	30.02	30.37	32.81	32.36	32.93	29.77	28.64	26.82	28.37	28.55	29.22	29.51	30.28	30.08	31.56	32.88
Morocco	44.12	57.96	73.92	74.79	75.04	67.42	75.43	77.93	82.75	82.00	81.67	81.67	81.67	81.67	81.67	81.67	81.67	81.67
Mongolia	54.53	41.56	42.65	47.33	59.51	62.08	67.80	65.50	67.79	67.95	70.54	63.62	53.40	58.27	67.18	57.54	64.35	76.86
Montenegro	51.16	51.68	54.35	57.65	57.88	64.54	61.40	59.88	46.99	58.09	64.33	78.18	86.02	93.35	66.38	63.11	66.17	64.97
Netherlands	28.46	27.89	27.14	27.28	28.69	30.89	31.35	32.25	30.16	28.32	29.27	29.57	30.08	29.07	32.43	26.79	28.46	28.46
New Zealand	32.95	31.79	31.83	33.15	35.82	32.04	29.43	28.82	27.75	27.40	27.85	28.16	30.45	29.51	27.72	28.55	28.22	27.48
Paraguay	62.26	56.29	50.29	47.46	48.41	36.83	38.15	35.37	36.36	40.07	41.16	46.07	49.25	46.95	49.98	44.88	51.52	48.58
Peru	19.70	18.25	18.15	18.58	18.53	17.46	18.16	17.80	17.80	17.80	17.80	17.80	17.80	17.80	17.80	17.80	17.80	17.80
Poland	19.65	21.05	23.74	27.33	30.81	30.10	33.55	30.72	32.10	30.84	37.83	43.67	43.63	43.67	39.37	43.45	43.45	43.45
Romania	28.97	31.21	36.57	36.24	30.85	32.85	37.90	41.07	41.08	42.20	48.03	43.28	38.63	42.85	36.64	40.68	43.49	29.11
Russian Federation	23.20	25.89	21.85	22.53	24.55	24.03	24.22	24.46	23.88	22.16	21.51	21.00	21.54	22.07	20.50	21.14	21.80	22.06
Sri Lanka	70.31	65.49	66.18	78.12	78.34	73.31	50.44	48.60	46.43	50.04	52.09	52.81	53.35	58.78	57.55	57.15	55.90	55.90
Sri Lanka	130.95	166.25	161.84	147.32	162.92	179.49	172.26	171.30	179.54	193.61	200.27	208.62	186.21	211.23	170.82	174.10	179.57	174.49
Slovak Republic	53.94	55.55	64.13	68.01	70.02	65.65	73.03	80.80	78.40	77.76	77.76	77.76	77.76	77.76	77.76	77.76	77.76	77.76
Slovenia	56.31	51.53	50.87	52.16	54.42	57.17	56.01	53.91	54.03	54.03	54.03	54.03	54.03	54.03	54.03	54.03	54.03	54.03
Spain	20.81	21.38	23.09	25.44	26.83	28.52	31.38	31.06	29.45	28.69	37.78	40.61	43.01	44.41	46.78	41.48	43.30	47.56
Sweden	31.63	32.92	31.95	34.58	36.36	36.60	40.17	34.99	37.62	36.69	37.69	40.40	44.41	44.41	46.78	41.48	43.30	47.56
Switzerland	31.06	31.08	31.76	34.57	35.80	38.46	40.40	40.03	37.07	36.47	38.27	40.94	42.80	44.41</				

CISG Exports (% of GDP)

Country Name	1975	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Australia	14.28	13.52	14.02	13.63	14.31	16.43	14.89	13.53	13.59	13.55	15.23	15.01	15.50	15.13	15.12	16.02	16.66	17.53
Albania				23.12	22.98	19.38	18.20	17.41	16.24	15.06	15.47	16.38	17.94	18.77	7.22	11.49	15.42	
Argentina	5.82	9.18	9.62	8.61	6.51	5.06	6.92	9.09	9.15	7.59	11.74	8.16	9.33	13.06	10.36	7.68	6.60	6.91
Armenia															35.00	40.75	39.82	47.22
Austria	29.19	21.87	29.04	30.25	34.08	32.92	34.28	32.97	31.66	34.02	36.28	33.24	34.63	34.35	36.37	37.08	35.93	34.44
Belarus	49.92	52.79	51.65	49.75	54.28	54.49	58.78	63.17	65.66	70.03	67.90	62.28	60.74	64.59	69.11	66.99	65.85	67.64
Belgium	14.53	12.99	16.18	16.53	17.52	15.82	15.93	17.77	13.76	19.98	23.65	16.68	15.27	13.80	13.90	19.18	21.00	22.46
Bosnia and Herzegovina																		
Brazil	7.54	7.04	7.25	6.68	7.12	9.05	9.42	7.61	11.42	13.95	12.25	8.82	9.46	10.89	8.93	8.68	10.87	10.90
Bulgaria	8.28	13.73	17.60	11.71	14.16	8.81	9.14	10.21	9.05	11.90	11.03	11.72	9.74	12.59	9.75	9.92	8.75	9.38
Burundi	22.43	22.15	23.18	25.05	26.88	28.08	26.92	25.69	25.46	28.28	27.85	26.82	26.72	25.68	25.81	25.12	27.09	30.21
Canada	25.44	25.12	26.62	20.58	23.28	22.82	16.42	19.37	24.01	24.23	28.15	29.09	30.13	34.25	33.99	33.00	29.81	26.62
Chile	4.59	4.81	4.69	6.60	8.52	10.65	12.96	11.67	10.19	10.41	9.21	10.00	14.49	14.83	13.90	16.07	17.37	18.05
China	15.80	17.40	16.90	16.60	15.23	16.21	11.85	10.93	10.44	11.88	13.81	18.84	16.95	16.29	18.00	20.57	17.71	16.43
Croatia																77.65	59.63	52.39
Cuba	32.64	32.63	47.81	42.33	44.68	45.26	50.92	56.41	54.86	48.74	45.04	47.29	48.06	51.46	30.24	21.93	16.92	13.19
Cyprus	35.49	49.75	47.81	42.33	44.68	45.26	50.92	56.41	54.86	48.74	45.04	47.29	48.06	51.46	30.24	21.93	16.92	13.19
Czech Republic																		
Denmark	30.20	29.01	29.05	28.06	29.74	33.21	37.08	36.88	36.89	37.33	37.45	34.05	34.40	34.31	36.18	37.15	37.37	37.85
Dominican Republic	27.72	20.69	20.01	17.34	20.64	19.17	14.62	14.34	14.41	28.21	28.15	24.36	25.56	33.02	33.47	33.83	40.12	37.07
Ecuador	16.07	16.04	16.30	14.73	17.91	17.15	14.66	14.66	15.56	17.38	19.68	19.63	15.37	19.01	20.28	22.76	24.13	26.04
Egypt, Arab Rep.	20.18	22.27	22.48	21.75	29.73	30.51	33.37	27.03	25.48	22.35	19.91	19.73	17.56	17.32	17.89	20.05	27.82	28.40
El Salvador																18.56	17.21	16.09
Estonia	22.40	23.82	27.17	28.20	29.93	31.19	31.68	29.22	29.10	29.92	28.44	25.84	25.16	23.99	23.38	22.53	21.66	25.97
Finland	49.52	45.58	51.59	61.76	59.49	64.72	63.36	61.59	61.32	59.09	62.57	58.19	42.69	36.73	45.80	46.04	47.46	46.08
Gabon	18.96	19.46	20.33	20.58	21.11	21.40	22.42	21.86	22.89	24.33	23.81	20.80	26.02	20.81	21.15	21.48	21.81	21.20
Georgia															42.54	41.56	42.54	46.89
Germany	18.58	19.63	19.53	19.15	19.36	20.22	21.87	22.67	22.04	23.59	24.91	23.12	22.46	22.90	24.22	24.80	25.70	24.01
Greece	17.36	17.25	17.16	16.76	16.63	23.73	26.26	21.13	20.23	20.63	19.81	21.72	22.25	20.03	19.58	18.14	18.27	17.25
Guinea																		
Honduras	30.69	33.72	34.83	36.18	37.69	37.24	31.64	26.67	26.16	25.70	25.10	26.59	22.96	26.29	31.00	37.20	34.42	34.68
Hungary	41.20	38.27	41.09	38.41	41.69	39.09	39.52	41.08	42.20	39.64	37.87	36.82	36.04	31.14	33.52	31.86	26.76	
Iceland	33.29	34.54	32.92	36.52	37.95	35.49	34.62	32.18	39.69	38.01	40.25	38.59	34.28	31.76	33.53	31.65	31.30	32.77
Iraq																		
Israel	32.63	38.95	44.57	49.57	47.44	45.78	42.50	38.15	35.38	40.88	44.66	39.45	39.20	35.10	36.81	34.69	29.88	30.63
Italy	19.52	20.69	22.28	22.59	23.33	21.04	22.98	22.01	21.89	22.00	19.49	16.74	18.32	19.30	19.63	17.76	18.42	24.26
Japan	12.54	13.29	12.84	10.90	11.34	13.42	13.63	14.72	14.00	13.63	14.72	14.00	10.15	10.24	9.87	9.77	9.06	
Korea, Rep.	26.89	30.01	30.37	28.42	28.59	32.06	34.27	33.23	32.97	33.37	31.97	35.64	38.27	36.42	30.80	27.99	26.33	26.59
Kyrgyz Republic																		
Latvia																		
Lebanon																		
Lesotho	14.47	17.91	11.90	17.26	23.10	21.01	19.29	19.45	36.61	17.39	16.46	15.66	13.02	20.91	21.61	17.96	18.71	23.92
Liberia	69.90	78.28	69.20	69.71	66.00	71.78	69.46	62.39	59.15	55.51	54.86	59.17			18.36	18.00	13.21	11.38
Lithuania																		
Luxembourg	95.14	90.66	89.36	86.19	93.54	91.07	89.14	91.57	92.83	104.00	111.58	102.11	95.27	100.86	103.69	101.55	100.41	100.68
Macedonia, FYR																		
Mauritania	38.44	37.94	32.78	33.37	33.19	36.82	45.07	40.06	45.74	45.59	59.91	56.15	46.09	50.27	49.83	45.64	34.74	31.49
Mexico	6.69	8.49	10.32	10.47	11.19	10.71	10.41	15.33	19.60	17.38	15.41	17.34	19.90	19.93	19.00	18.60	16.36	15.25
Moldova																		
Mongolia																		
Montenegro																		
Netherlands	49.08	50.08	47.20	45.21	49.65	52.31	56.96	56.96	56.64	60.59	62.15	54.69	51.30	53.68	57.09	56.45	57.17	55.38
New Zealand	23.28	26.69	26.40	26.90	28.94	29.13	28.26	28.06	28.62	31.62	29.14	28.36	25.78	25.98	26.07	26.53	28.91	30.27
Norway	36.45	36.24	34.65	36.38	39.69	43.24	43.28	41.48	42.92	42.74	34.24	33.37	33.06	38.01	40.15	39.94	37.87	37.92
Paraguay																		
Peru	10.85	12.05	15.90	20.73	27.74	22.40	16.09	16.53	19.71	19.35	22.97	13.94	10.97	18.84	12.39	15.76	12.76	12.19
Poland																		
Romania																		
Russian Federation																		
SACU (Venezuela and the Bahamas)																		
San Marino																		
Senegal																		
Singapore	137.19	149.62	163.00	165.77	185.05	202.61	198.79	186.13	167.57	157.40	153.12	149.11	164.59	185.22	179.47	177.45	169.99	162.00
Slovak Republic																		
Slovenia	12.69	12.69	13.59	14.23	14.05	14.66	16.70	17.41	19.96	31.85	31.40	18.66	18.18	17.74	17.03	16.13	16.36	16.18
Spain	28.02	27.31	27.27	28.10	30.26	29.67	30.40	34.90	36.17	36.91	35.72	33.20	32.75	32.40	32.17	30.47	28.24	28.13
Sweden																		
Switzerland	21.88	19.96	18.57	15.17	19.56	16.63	15.99	14.42	13.53	34.69	34.64	35.26	35.98	37.49	38.67	34.62	33.33	35.60
Syrian Arab Republic	4.43	4.86	3.82	4.13	3.74	4.24	3.68	3.27	3.61	3.86	3.86	3.86	3.86	3.86	3.86	3.86	3.86	3.86
Turkey	8.05	11.39	9.15	13.65	19.40	19.44	18.06	8.38	8.66	12.09	13.74	11.81	8.25	7.37	7.95	7.45	7.66	7.66
Uganda																		
Ukraine	8.54	8.25	7.61	8.21	9.05	9.83	8.77	7.90	7.75	7.24	7.24	7.24	7.24	7.24	7.24	7.24	7.24	7.24
United States	16.78	19.56	19.90	18.89	16.83	15.03	14.33	25.69	25.96	26.98	26.72	21.65	22.06	23.49	23.63	23.53	20.45	19.15
Uruguay																		
Uzbekistan																		
Zambia	36.60	43.29	39.34	33.56	45.42	41.39	28.63	27.68	32.92	35.07	36.44	42.15	39.48	33.31	26.81	35.86	34.61	33.37

Trade (% of GDP)

Country Name	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Afghanistan	26.95	28.09	26.49	24.71													
Albania	76.65	70.17	72.33	65.70	64.01	64.83	44.50	43.25	39.01	36.79	34.69	30.53	31.03	35.60	38.66	34.82	34.82
Algeria						64.68	65.46	59.92	53.74	53.18	50.33	36.03	32.68	38.11	47.15	48.38	52.72
American Samoa																	
Andorra																	
Angola			100.33	119.65	157.24	153.98	168.80	174.96	137.63	169.75	61.66	76.67	61.88	55.16	51.06	59.84	63.22
Antigua and Barbuda			16.94	14.32	12.84	11.55	14.29	15.61	14.99	12.35	11.06	11.06	11.06	11.06	11.06	11.06	11.06
Argentina																	
Armenia	11.80	15.10															
Aruba																	
Australia	29.06	26.93	28.71	28.26	29.71	32.38	31.65	30.38	29.24	28.57	32.51	33.14	32.64	32.60	32.13	32.22	32.24
Austria	58.56	61.99	62.35	61.73	65.51	69.13	70.76	66.34	64.63	68.88	72.53	66.24	68.04	68.87	72.98	73.97	72.48
Azerbaijan																	
Bahamas, The			148.79	150.18	128.08	133.26	129.75	125.34	124.98	121.90	124.06	121.72	117.13	111.00	111.00	110.12	106.12
Bahrain																	
Bangladesh	11.09	21.38	19.43	21.04	21.91	239.35	251.34	235.76	169.63	190.33	191.61	189.92	169.77	172.83	186.27	180.64	180.64
Barbados																	
Belize	110.80	108.88	116.69	126.43	141.59	142.18	148.76	139.30	139.66	139.11	147.82	140.76	140.76	140.76	140.76	140.76	140.76
Belgium																	
Benin	99.71	105.48	104.24	100.57	110.67	112.28	120.09	128.48	131.17	139.70	134.96	128.37	119.75	126.83	136.11	132.33	129.20
Bermuda																	
Bhutan																	
Bolivia	58.15	57.56	56.42	52.70	51.57	46.61	46.61	46.22	52.36	49.47	41.89	47.07	44.43	41.91	45.65	46.70	46.44
Bosnia and Herzegovina																	
Brazil	107.39	116.71	120.21	120.58	118.37	119.50	121.24	123.84	124.65	118.77	117.52	117.46	123.57	114.45	105.36	104.85	99.54
Bulgaria	15.04	16.47	15.17	14.54	16.30	20.36	15.88	19.22	15.88	20.43	21.47	19.34	15.17	15.65	16.88	14.39	15.16
Brunei Darussalam	113.49	111.91	110.72	109.49	109.20	105.03	106.86	106.57	107.25	106.66	106.57	107.25	106.66	106.57	107.25	106.66	106.57
Burkina Faso	37.50	35.21	38.40	35.22	37.53	40.21	40.71	39.82	37.46	39.72	40.95	37.96	39.44	38.13	32.39	35.42	33.80
Burundi	27.28	30.38	34.89	31.93	36.88	32.10	31.18	37.12	33.79	35.06	31.81	34.04	35.48	38.94	32.69	35.65	38.42
Cambodia																	
Cameroon	48.23	50.01	52.87	51.78	49.32	55.02	50.28	62.13	59.70	64.47	65.02	46.01	37.32	31.99	38.48	37.50	34.64
Canada	48.62	45.01	46.54	48.72	53.20	44.31	51.11	47.49	47.66	53.75	54.24	54.74	52.46	52.68	51.34	51.50	50.81
Cape Verde																	
Cayman Islands																	
Central African Republic	61.05	51.51	59.53	57.31	57.57	66.30	58.44	56.40	60.77	58.90	53.05	47.14	46.31	40.92	42.80	42.39	34.90
Chad	40.25	42.47	43.73	44.39	54.42	45.61	37.76	20.06	33.96	42.07	43.23	48.77	51.88	45.12	45.19	41.39	36.35
Chile	52.85	45.92	43.04	44.51	49.38	49.80	43.17	40.62	45.33	49.58	53.86	55.12	57.35	61.50	66.04	64.54	60.17
China	9.16	9.29	9.01	13.67	17.96	21.66	24.64	20.97	19.26	20.80	22.50	22.48	29.24	29.24	29.24	29.24	31.67
Colombia	29.87	31.00	30.17	30.35	28.68	31.79	27.29	26.11	23.67	24.35	26.34	30.83	29.87	30.15	31.62	35.39	38.25
Comoros																	
Congo, Dem. Rep.	34.05	31.80	30.00	31.65	23.69	40.84	50.97	69.53	72.51	64.35	67.06	69.53	57.93	54.75	54.75	54.75	54.75
Congo, Rep.	99.64	106.93	116.85	104.79	96.04	120.14	134.11	123.77	109.71	107.25	112.79	93.50	80.36	81.05	83.35	70.81	69.68
Costa Rica	68.61	63.82	67.20	64.21	63.20	63.50	63.44	67.25	60.78	60.03	55.84	53.98	57.41	60.92	64.36	66.50	70.68
Cote d'Ivoire	73.31	77.99	78.96	73.96	72.27	76.18	77.46	75.75	72.68	77.40	79.17	69.68	63.05	58.38	61.09	58.80	57.00
Croatia																	
Cuba	76.83	76.62	76.81	76.76	76.71	77.03	76.78	76.79	76.51	76.41	76.88	75.51	76.82	75.14	75.93	71.11	51.00
Curacao																	
Cyprus	92.18	112.37	115.58	105.25	108.45	108.33	113.57	115.16	114.38	121.76	107.57	93.46	97.56	101.58	111.33	108.61	104.18
Czech Republic																	
Dominark	62.09	63.32	62.44	58.99	63.06	68.04	73.72	73.81	72.40	73.96	75.14	67.37	63.85	66.33	69.72	63.77	131.95
Dominica																	
Dominican Republic	102.24	102.24	107.58	118.98	114.56	113.26	110.71	104.60	96.49	112.54	114.57	123.43	125.55	135.08	121.17	121.17	121.17
Ecuador	35.41	34.01	34.44	33.30	36.08	35.03	29.92	32.41	30.88	33.06	35.72	33.11	37.73	42.66	45.11	44.59	45.20
Egypt, Arab Rep.	61.46	56.27	55.68	58.76	78.06	73.38	82.18	68.97	61.91	58.16	51.96	41.33	35.32	52.48	50.24	52.76	63.61
El Salvador																	
Equatorial Guinea																	
Eritrea	93.79	99.49	99.68														
Estonia																	
Ethiopia																	
Fiji	86.63	80.14	90.59	89.72	95.98	100.50	100.45	92.87	92.65	86.72	89.10	81.14	87.36	105.44	123.02	129.50	117.82
Finland	50.94	49.86	53.02	53.26	62.38	58.26	58.21	58.26	58.21	57.44	50.57	50.57	48.60	48.65	46.61	44.28	44.28
France	36.80	39.71	40.68	40.69	41.81	44.38	46.36	46.26	46.11	48.98	48.07	41.80	41.24	42.38	45.08	43.85	44.03
French Polynesia																	
Gabon	97.43	91.68	102.85	108.68	95.89	96.35	104.06	101.26	104.87	99.29	119.85	89.50	87.91	78.52	86.99	76.90	80.53
Gambia, The	88.32	87.41	84.25	93.57	99.21	106.53	110.72	103.97	112.87	115.91	97.78	108.72	108.82	120.34	131.49	64.10	64.10
Germany	38.89	41.26	40.26	40.26	43.46	45.31	48.06	48.06	48.18	50.07	51.85	46.50	46.50	47.46	47.46	47.46	47.46
Ghana	37.78	31.76	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66	32.66
Greece	42.94	42.40	42.13	40.29	43.21	54.22	57.35	50.88	50.05	49.72	49.69	51.86	51.86	48.16	49.56	48.75	46.82
Greenland																	
Grenada																	
Guam																	
Guatemala	45.26	49.16	50.71	48.74	47.20	47.11	40.69	33.47	27.55	28.15	24.93	30.64	38.14	38.04	39.78	45.87	39.52
Guinea	31.13	33.21	41.91	43.79	48.80	54.33	46.91	49.13	38.26	64.68	67.47	59.16	62.34	57.95	60.88	64.52	60.92
Guinea-Bissau	149.79	157.08	141.98	126.18	129.03	174.93	161.23	122.86	110.46	98.52	109.97	99.52	170.33	131.56	139.87	142.97	233.94
Haiti																	
Hong Kong, China	70.37	71.88	74.09	76.47	79.06	81.39	69.34	54.73	54.73	54.73	54.73	54.73	54.73	54.73	54.73	54.73	54.73
Hong Kong, SAR, China	163.21	168.20	160.19	170.15	177.97	178.38	183.63	171.24	189.96	205.14	204.31	209.50	229.14	250.61	248.79	252.78	261.58
Hungary	89.82	80.80	86.63	85.95	85.62	80.34	80.10	75.11	75.11	76.05	80.32	80.69	76.22	70.96	68.74	59.68	67.10
Iceland	74.92	68.69	66.61	70.07	74.72	70.97	70.70	69.07	77.21	76.05	80.32	73.31	69.59	64.41	68.74	65.98	63.83
India	12.08	12.58	12.43	12.68	12.68	15.12	14.26	13.88	13.45	13.77	12.68	12.01	12.37	13.26	14.91	15.24	16.69
Indonesia	45.03	46.05	44.04	42.62	53.12	54.39	53.06	49.36	54.20	47.66	42.65	39.97	46.33	44.87	45.69	49.06	49.90

Trade (% of GDP)

Country Name	1978	1987	1988	1989	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Albania	49.32	56.63	59.23	57.85	60.48	62.14	66.49	67.67	137.90	121.14	104.86	100.56	76.17	73.07	66.91	54.97	45.26	89.80
Algeria	45.09	50.49	57.85	60.48	62.14	66.49	67.67	137.90	121.14	104.86	100.56	76.17	73.07	66.91	54.97	45.26	89.80	89.80
American Samoa																		
Andorra																		
Angola	152.11	137.67	120.87	178.99	152.45	150.33	137.15	137.15	132.63	123.40	135.66	118.81	119.91	129.33	100.45	105.36	108.28	
Antigua and Barbuda	13.33	158.65	148.16	148.16	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30	137.30
Argentina	21.41	23.34	23.35	21.38	22.62	21.85	21.85	41.75	40.64	44.08	44.26	43.99	44.96	45.13	37.35	40.11	41.35	37.12
Armenia	79.23	78.55	71.84	70.56	71.62	75.94	82.19	71.62	75.94	72.04	62.61	58.34	55.70	58.48	66.15	72.34		
Aruba	175.34	168.78	163.27	164.59	139.02	134.33	133.96	145.39	145.48	145.48	143.46	142.36	141.19	140.06	136.32	157.21		
Australia	38.16	37.92	39.92	38.89	40.78	43.95	41.22	39.91	40.86	40.86	41.12	41.86	44.78	40.62	40.64	42.60		
Austria	72.53	79.01	81.21	82.93	90.67	93.96	94.61	90.99	99.19	103.69	107.66	112.07	112.78	95.63	104.01	111.26	110.48	
Azerbaijan	85.06	82.05	77.23	69.86	77.42	92.82	107.56	92.82	115.83	115.83	105.27	96.84	73.87	80.51	74.99	80.51	74.32	
Bahamas, The	100.86	133.49	123.56	104.43	105.90	107.26	80.58	81.45	87.11	93.20	100.11	100.70	100.02	87.53	90.23	101.03		
Bahrain	164.12	148.98	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83	143.83
Bangladesh	91.56	93.95	96.25	86.43	88.94	89.76	88.94	88.94	88.94	88.94	88.94	88.94	88.94	88.94	88.94	88.94	88.94	88.94
Barbados	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55	51.55
Belarus	96.77	125.52	125.60	120.94	141.61	137.04	133.00	133.00	134.14	142.14	118.28	124.30	121.25	129.60	112.31	122.16	163.34	158.74
Belgium	128.11	135.82	135.60	135.75	133.35	135.06	147.65	142.66	142.66	146.96	155.42	169.01	142.81	142.81	142.81	157.39	167.39	168.40
Belize	300.29	108.51	112.43	126.69	119.97	118.68	119.38	117.28	117.28	117.28	117.28	117.28	117.28	117.28	117.28	117.28	117.28	117.28
Benin	56.52	58.71	59.59	64.19	55.19	53.24	53.18	53.18	53.04	48.66	50.12	46.21	47.91	47.28	40.89	39.76	41.94	
Bermuda																		
Bhutan	81.16	82.02	82.52	81.82	82.47	76.19	69.56	37.47	31.51	34.02	33.50	36.08	31.78	34.47	31.07	38.20	35.98	
Bolivia	49.86	50.47	52.28	44.17	45.00	45.23	49.35	51.97	57.45	67.64	67.64	74.54	76.06	82.87	68.63	75.51	82.33	85.10
Bonaire and Herzegovina																		
Brazil	92.00	97.63	91.82	94.42	94.97	90.47	82.06	82.06	81.12	85.21	86.33	86.33	85.69	87.82	86.89	78.93	59.48	55.12
Brazil	14.93	15.84	15.86	20.23	21.72	25.68	26.88	27.06	27.06	26.65	25.83	25.21	27.14	27.14	22.12	22.77	24.51	26.54
Brunei Darussalam	120.57	115.68	107.88	104.22	103.17	108.72	105.26	100.59	100.59	97.46	106.94	96.94	108.57	105.91	108.57	114.31	110.41	112.54
Bulgaria	116.20	112.09	117.18	116.96	106.26	106.87	102.98	107.38	115.32	140.01	140.01	138.65	136.95	103.85	116.72	133.02	133.02	136.95
Burkina Faso	38.18	37.42	40.94	33.52	34.26	32.37	30.87	30.73	37.13	35.54	36.61	35.51	36.49	40.41	41.93	49.72		
Burundi	21.97	24.28	27.44	23.54	22.95	20.96	21.67	27.38	31.58	41.69	41.69	41.48	47.42	49.93	48.10	47.02		
Cambodia	69.16	78.93	75.62	94.18	111.61	113.86	119.69	123.08	134.51	135.83	144.52	138.27	133.32	105.14	113.60	113.58		
Cameroon	41.77	39.79	39.14	38.67	54.00	56.82	51.17	47.37	47.20	50.86	57.05	64.18	51.83	54.36	65.41	65.41	65.41	65.41
Canada	72.75	77.02	80.88	84.71	85.40	81.34	84.71	84.71	84.71	84.71	84.71	84.71	84.71	84.71	84.71	84.71	84.71	84.71
Cayman Islands	75.49	81.86	80.97	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16	82.16
Central African Republic	38.36	44.45	42.26	45.71	46.02	38.97	37.47	37.47	31.51	34.02	33.50	36.08	31.78	34.47	31.07	38.20	35.98	
Chad	46.61	49.31	48.06	50.51	51.57	64.32	126.35	83.38	83.38	101.77	104.84	104.29	107.10	103.00	67.75	69.38	66.17	
Channel Islands																		
Chile	56.24	56.29	55.87	56.92	57.87	61.41	61.94	68.12	68.12	68.12	69.67	70.57	77.16	81.04	66.87	69.91	72.75	68.06
China	38.06	39.61	37.69	44.24	43.08	47.70	45.91	45.91	45.91	45.91	45.91	45.91	45.91	45.91	45.91	45.91	45.91	45.91
Colombia	36.04	35.60	35.91	36.15	32.67	33.90	34.98	35.52	35.52	35.63	36.33	36.33	36.33	38.05	34.28	38.70	38.70	38.70
Comoros	69.70	61.17	48.61	46.62	49.27	46.31	46.49	48.71	48.08	49.90	52.81	55.05	55.05	52.81	62.85	68.08	67.10	
Congo	128.41	135.76	148.90	131.39	133.81	130.73	136.46	156.86	156.86	148.78	148.78	148.78	148.78	132.63	130.62	138.82	132.69	
Congo Rep.	82.10	85.34	97.53	97.67	94.39	86.01	90.02	90.02	90.02	90.02	90.02	90.02	90.02	90.02	90.02	90.02	90.02	90.02
Cote d'Ivoire	73.52	74.51	72.46	72.54	73.75	80.31	83.43	83.43	83.43	83.43	83.43	83.43	83.43	83.43	83.43	83.43	83.43	83.43
Croatia	78.41	84.43	77.48	79.19	86.48	90.61	90.04	92.83	92.83	92.83	92.83	92.83	92.83	92.83	92.83	92.83	92.83	92.83
Cuba	32.63	32.75	32.50	31.87	31.08	29.36	24.73	25.59	25.59	31.31	39.36	37.19	37.97	37.97	32.84	38.58		
Curacao																		
Cyprus	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44	304.44
Czech Republic	98.18	104.07	105.12	107.22	124.01	124.01	118.45	118.45	118.45	124.08	124.08	124.08	124.08	124.08	124.08	124.08	124.08	124.08
Dominica	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49
Dominik	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49	82.49
Dominican Republic	112.71	126.13	126.02	126.02	100.96	86.72	85.44	80.91	80.91	80.91	80.91	80.91	80.91	99.44	90.99	89.62		
Ecuador	73.35	76.42	79.38	79.89	82.91	86.49	74.72	72.81	86.49	83.88	65.53	67.97	66.05	64.72	52.50	57.25	60.41	58.88
Egypt, Arab Rep.	44.22	45.02	43.40	49.20	59.46	50.75	49.38	47.24	50.75	59.10	59.71	62.59	68.06	52.10	61.45	64.35	65.91	64.35
El Salvador	46.95	43.74	41.93	38.36	39.02	39.81	40.99	46.18	57.82	69.80	61.52	65.08	71.68	56.55	47.94	45.26	44.75	
Equatorial Guinea	55.01	63.45	61.87	62.22	69.83	67.47	67.44	70.04	72.91	69.80	71.85	74.18	76.58	61.87	68.77	74.64	74.85	
Eritrea	237.99	224.19	275.23	185.60	193.44	151.96	173.47	145.12	131.02	148.23	148.23	148.23	148.23	136.90	138.75	154.01	145.43	139.89
Estonia	116.62	115.41	94.93	96.26	67.88	72.06	76.59	74.01	65.57	61.11	45.26	34.96	30.56	27.97	28.13	27.97	28.13	27.97
EU	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74	134.74
Finland	23.94	23.94	23.94	23.9														

Country Name	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Iran, Islamic Rep.	76.77	66.97	61.37	46.42	43.23	41.48	38.81	37.26	38.55	27.84	22.94	13.77	17.83	21.31	27.53	37.66	44.56
Iraq	84.85	93.21	100.12	101.87	107.56	104.51	103.15	96.01	99.87	110.67	102.12	99.25	102.96	107.54	114.94	107.34	108.78
Isle of Man	99.95	107.88	110.10	125.58	118.94	103.12	103.46	95.84	89.79	95.72	102.93	91.81	96.30	83.26	83.53	86.08	75.25
Israel	38.66	42.91	43.55	42.99	45.53	44.76	47.17	45.32	41.86	44.40	40.41	37.67	37.04	36.57	37.83	38.59	35.29
Italy	80.88	66.94	58.15	77.88	100.44	102.11	103.00	86.68	78.72	117.19	121.96	94.73	92.87	91.42	96.01	99.94	101.60
Japan	25.11	25.86	24.12	23.63	23.63	24.12	24.11	27.79	23.85	24.84	18.35	17.40	18.35	18.99	19.67	18.18	18.18
Jordan	116.22	118.44	115.62	121.65	124.05	140.18	130.85	130.85	114.44	114.33	113.07	84.75	93.99	112.39	133.38	154.65	144.21
Kazakhstan	64.34	64.21	66.55	67.62	57.36	65.42	64.28	58.22	54.16	58.80	55.45	55.74	47.70	49.97	53.16	57.02	55.60
Kenya	95.41	92.10	94.00	101.10	120.87	113.64	112.36	125.33	113.80	105.00	147.02	144.17	125.02	134.19	143.25	158.67	93.38
Korea, Dem. Rep.	62.30	62.02	61.58	60.57	60.24	74.03	73.94	68.98	67.05	67.01	63.35	66.22	69.47	65.70	59.53	56.98	55.32
Korea, Rep.	110.49	115.47	110.40	106.79	107.98	112.65	107.98	106.87	108.48	104.75	96.42	84.20	89.66	90.50	93.77	103.01	144.61
Kuwait	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56	63.56
Kyrgyz Republic	110.49	115.47	110.40	106.79	107.98	112.65	107.98	106.87	108.48	104.75	96.42	84.20	89.66	90.50	93.77	103.01	144.61
Laos PDR	110.49	115.47	110.40	106.79	107.98	112.65	107.98	106.87	108.48	104.75	96.42	84.20	89.66	90.50	93.77	103.01	144.61
Latvia	118.84	118.84	124.33	124.33	124.33	131.09	131.09	131.09	131.09	131.09	131.09	131.09	131.09	131.09	131.09	131.09	131.09
Lebanon	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30
Lebanon	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30
Libya	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30	131.30
Lichtenstein	177.92	167.95	167.10	163.55	175.13	174.88	173.24	176.71	177.43	197.36	208.73	190.51	183.35	190.87	193.01	185.77	190.62
Lithuania	36.75	32.69	36.49	41.21	44.96	43.08	34.32	31.89	28.10	31.19	32.75	27.70	39.07	39.40	40.72	44.63	44.80
Luxembourg	75.02	69.31	64.63	64.31	64.03	63.65	57.16	51.34	49.07	54.80	54.09	47.96	53.26	55.87	53.30	57.20	52.58
Madagascar	85.86	87.98	87.58	91.20	101.66	110.96	109.26	108.90	106.51	105.09	103.17	104.95	111.92	122.62	136.69	146.96	159.31
Malaysia	38.93	32.04	32.34	41.43	39.22	43.80	41.75	44.11	47.64	50.62	60.73	52.59	49.65	50.95	49.37	50.88	52.84
Maldives	160.02	161.91	167.35	154.09	164.01	167.34	153.11	138.16	133.46	138.89	143.65	138.16	148.05	150.32	154.60	164.48	165.24
Malta	98.84	115.84	106.35	98.31	93.87	103.48	120.01	124.77	132.04	118.72	140.70	135.47	115.67	113.30	106.57	76.68	76.68
Marshall Islands	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86
Mauritius	16.51	18.35	20.54	21.51	23.64	23.68	23.34	25.65	28.42	26.93	25.75	30.77	32.88	38.47	38.06	38.31	35.64
Mexico	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86
Micronesia, Fed. Sts.	16.51	18.35	20.54	21.51	23.64	23.68	23.34	25.65	28.42	26.93	25.75	30.77	32.88	38.47	38.06	38.31	35.64
Moldova	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86	107.86
Monaco	16.51	18.35	20.54	21.51	23.64	23.68	23.34	25.65	28.42	26.93	25.75	30.77	32.88	38.47	38.06	38.31	35.64
Mongolia	55.82	54.64	54.22	46.44	46.87	44.13	51.47	51.32	50.83	57.43	58.70	49.79	50.64	53.12	50.56	53.11	53.66
Montenegro	11.98	11.87	10.93	10.19	21.28	22.04	24.01	24.76	17.20	15.25	13.10	10.77	8.33	7.96	6.09	5.58	4.42
Mozambique	22.27	24.95	26.11	26.04	27.75	30.27	31.52	30.40	31.53	30.40	31.53	32.72	33.83	33.35	32.19	34.68	34.68
Namibia	94.48	96.73	93.14	90.08	99.19	104.73	109.98	109.93	115.91	120.06	101.86	100.35	104.87	111.21	109.10	110.22	110.22
Nepal	53.66	56.48	64.51	53.15	59.65	59.46	55.74	58.35	59.75	65.84	61.17	53.82	50.65	48.49	53.40	49.53	49.53
Netherlands	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98
Netherlands	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98	64.98
Niger	50.24	56.60	48.97	50.36	55.41	62.71	60.38	57.07	47.74	49.88	53.53	40.69	45.98	41.89	39.90	36.41	34.78
Nigeria	41.17	42.14	47.40	43.31	43.88	48.57	49.11	38.65	31.14	27.80	28.94	37.59	53.28	45.15	57.85	72.24	68.55
Northern Mariana Islands	78.73	81.13	78.50	72.39	77.02	80.39	79.27	77.84	79.79	76.97	78.13	71.92	67.00	66.71	72.48	73.93	72.00
Norway	118.24	108.30	104.34	107.05	101.78	100.31	104.78	101.70	91.72	87.86	87.01	80.17	77.94	71.36	74.83	77.81	77.81
Oman	33.25	30.10	28.31	27.72	33.45	36.59	35.33	31.71	34.90	33.70	33.24	34.57	34.24	35.26	35.63	38.91	35.55
Pakistan	86.14	82.55	91.24	87.36	91.07	96.90	96.98	97.33	89.65	92.59	94.55	94.93	92.84	95.17	93.39	89.57	89.42
Pakistan	86.14	82.55	91.24	87.36	91.07	96.90	96.98	97.33	89.65	92.59	94.55	94.93	92.84	95.17	93.39	89.57	89.42
Papua New Guinea	32.79	32.28	38.62	40.79	46.83	41.82	35.79	36.07	39.20	34.76	39.42	29.27	23.69	41.45	24.64	29.60	27.14
Peru	48.13	44.58	45.18	45.60	48.20	52.04	51.01	45.47	49.42	49.10	45.91	48.70	52.86	55.33	58.38	60.80	62.18
Philippines	42.35	38.47	41.34	41.94	51.72	55.30	56.68	56.87	60.08	65.05	62.69	55.05	60.72	64.42	66.11	66.31	61.53
Poland	121.90	117.11	137.25	133.56	137.42	137.70	141.33	139.12	134.05	137.00	136.73	129.89	131.12	132.76	141.89	147.59	149.43
Portugal	26.87	33.97	31.93	38.58	43.80	40.82	31.58	35.70	32.34	32.30	30.67	32.74	26.59	24.22	23.43	19.68	25.37
Romania	95.67	84.30	90.18	91.32	89.21	90.89	93.09	90.04	86.35	79.97	86.71	63.49	67.99	65.63	71.83	71.33	75.20
Romania	95.67	84.30	90.18	91.32	89.21	90.89	93.09	90.04	86.35	79.97	86.71	63.49	67.99	65.63	71.83	71.33	75.20
Samoa	66.47	68.42	62.83	62.67	62.25	63.22	62.25	72.61	86.96	83.17	67.06	57.21	58.20	51.89	55.37	57.60	54.01
San Marino	97.69	88.10	85.32	83.56	81.39	71.29	71.29	73.66	74.92	75.05	59.64	54.30	67.27	65.29	65.85	59.03	59.03
Saudi Arabia	99.58	90.47	43.83	46.99	61.08	63.11	26.93	41.69	33.11	31.43	31.43	26.93	35.25	43.12	41.59	68.69	60.24
Senegal	283.70	306.19	327.45	335.27	375.77	412.16	401.00	374.10	334.56	315.00	305.95	295.59	326.20	340.86	347.92	344.83	325.90
Seychelles	39.34	33.88	79.48	81.95	99.83	121.67	115.13	95.91	110.08	94.16	95.98	111.53	89.94	91.50	96.23	94.75	95.62
Slovenia	57.85	56.70	55.47	58.01	60.98	62.73	58.72	53.32	45.73	49.13	53.98	52.34	50.61	51.71	48.08	43.00	39.23
South Africa	28.99	29.97	29.11	27.74	27.84	31.50	35.32	36.48	3								

Country Name	1986	1987	1988	1989	2000	2001	2002	2003	2004	2005	2007	2008	2009	2010	2011	2012
Afghanistan	35.80	32.71	29.30	36.29	40.14	39.29	49.27	52.94	54.98	57.71	56.87	148.70	150.88	152.70	152.45	152.45
Algeria	32.56	34.57	36.94	46.26	54.26	53.62	70.24	75.97	82.73	85.84	84.73	85.84	84.73	85.84	84.73	85.84
Algeria (DZ)	63.87	63.88	62.61	71.02	74.78	68.39	72.75	75.97	82.73	85.84	84.73	85.84	84.73	85.84	84.73	85.84
Angola	44.64	46.49	47.09	46.64	52.58	52.33	50.03	48.25	49.68	51.81	56.06	57.74	48.02	57.74	48.02	57.74
Argentina	99.07	99.99	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39	100.39
Australia	131.04	140.70	149.03	104.45	109.22	114.02	114.02	114.02	114.02	114.02	114.02	114.02	114.02	114.02	114.02	114.02
Bahrain	57.31	54.06	48.90	48.19	53.31	55.95	55.17	54.13	53.31	55.95	54.13	53.31	55.95	54.13	53.31	55.95
Bangladesh	84.23	82.10	76.16	64.83	53.70	56.98	56.07	64.05	65.89	64.48	66.94	64.48	66.94	64.48	66.94	64.48
Barbados	59.20	65.39	79.46	71.44	74.27	69.22	64.28	68.47	77.61	75.83	77.98	64.28	68.47	77.61	75.83	77.98
Belize	91.47	92.45	94.95	85.37	86.62	86.84	81.23	86.56	89.30	92.24	89.71	94.73	94.68	88.86	93.39	95.73
Bermuda	87.30	84.48	94.51	99.20	89.43	82.92	83.93	93.82	93.82	96.44	120.75	137.06	146.11	133.38	133.23	136.18
Bhutan	63.76	64.16	64.27	80.06	74.31	66.30	66.28	66.73	77.51	80.66	86.32	82.46	76.23	70.97	73.45	82.67
Bolivia	101.07	101.50	106.80	89.97	90.32	92.69	91.90	96.72	103.53	110.08	111.23	104.73	98.25	108.33	122.49	129.72
Bosnia and Herzegovina	68.10	64.72	60.81	54.72	56.56	51.04	52.69	51.74	63.99	63.40	63.40	71.21	77.89	68.99	72.39	74.18
Botswana	139.03	146.57	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88	154.88
Brazil	239.03	246.16	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88	254.88
Burkina Faso	52.55	48.63	40.25	41.07	51.12	51.82	61.40	65.43	66.10	60.07	66.94	66.94	60.07	66.94	66.94	60.07
Burundi	109.14	113.16	101.46	87.28	91.77	105.09	111.13	108.14	111.18	122.18	124.34	121.53	131.57	110.68	137.36	158.39
Cameroon	202.04	224.51	238.57	249.30	279.01	275.65	261.74	250.25	280.54	286.15	308.96	319.53	294.90	312.63	321.76	311.40
Canada	135.83	137.54	140.45	148.73	165.05	168.31	174.45	176.20	173.72	158.89	151.31	159.36	160.30	143.73	155.78	165.03
Chad	66.70	68.16	67.29	94.33	112.15	99.30	96.19	92.36	100.00	105.28	111.08	123.16	127.09	100.22	111.84	125.94
China	54.70	54.94	70.88	71.33	60.94	67.12	54.96	67.29	68.15	69.25	69.71	68.59	71.10	63.61	74.32	69.08
Colombia	181.77	185.67	209.49	217.57	220.41	203.36	199.36	194.20	210.37	203.85	204.58	192.47	176.67	162.56	170.33	167.22
Costa Rica	164.81	169.68	169.21	170.43	174.03	174.03	174.03	174.03	174.03	174.03	174.03	174.03	174.03	174.03	174.03	174.03
Cuba	55.79	62.87	60.03	64.64	66.17	83.56	71.10	63.78	63.14	62.93	69.31	61.76	72.20	55.11	65.88	61.77
Cyprus	167.89	160.46	163.21	171.06	188.98	163.07	162.34	157.37	159.01	156.72	177.51	180.79	177.06	157.79	172.95	185.50
Czechia	124.17	105.04	69.85	63.86	75.26	76.03	70.61	68.26	92.26	113.20	99.80	104.36	133.27	105.00	123.59	135.45
Denmark	127.86	127.81	134.20	131.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35	123.35
Dominican Republic	62.10	60.64	63.31	63.69	63.87	67.33	50.66	52.17	61.04	62.71	63.42	63.42	63.42	63.42	63.42	63.42
Ecuador	129.18	129.07	123.57	119.51	126.21	123.39	130.67	140.73	132.71	142.82	137.15	144.59	134.42	110.36	117.77	130.80
Egypt	77.97	99.99	107.35	112.24	121.69	115.82	120.30	131.33	122.38	122.38	117.88	121.20	107.81	117.05	145.18	127.80
Egypt (AR)	96.47	60.69	52.52	59.56	61.33	61.35	62.41	60.16	62.61	62.61	62.61	62.61	62.61	62.61	62.61	62.61
Egypt (EG)	44.24	37.96	36.61	46.88	54.46	61.87	76.19	76.51	72.67	75.67	75.88	80.90	78.62	68.10	70.78	86.59
El Salvador	109.18	105.06	103.98	103.08	85.42	88.85	94.08	95.86	81.89	80.76	81.41	102.79	103.41	102.32	91.10	95.05
Equatorial Guinea	58.46	64.04	56.71	52.57	55.74	55.84	46.23	44.25	46.15	44.06	44.76	44.58	47.08	45.98	41.73	42.38
Estonia	113.98	113.98	120.44	121.87	134.62	128.77	121.79	119.73	125.41	134.72	137.93	140.17	144.24	130.14	148.28	157.06
Ethiopia	43.09	44.71	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07	46.07
Finland	54.86	54.98	57.66	61.04	68.37	66.84	62.20	57.00	57.88	56.93	56.75	57.26	63.60	55.17	58.39	58.97
France	48.48	56.01	57.01	62.94	67.30	57.98	68.09	62.18	67.20	71.65	76.76	82.76	86.48	76.03	81.36	98.22
Ghana	44.40	41.47	44.30	39.13	42.39	42.39	39.98	39.98	45.27	47.40	45.92	47.35	55.75	69.00	71.67	76.55
Greece	75.39	82.70	71.39	76.03	86.00	78.28	64.42	63.14	75.01	77.36	70.60	66.96	64.68	65.10	75.24	75.24
Guatemala	72.61	74.51	73.46	75.96	74.95	68.88	67.73	69.32	71.94	80.76	81.41	102.79	103.41	102.32	91.10	95.05
Honduras	85.98	88.63	91.69	86.25	90.53	94.40	77.88	67.93	90.98	89.85	88.79	96.18	94.13	89.56	96.49	68.18
Hong Kong	38.33	36.85	34.01	32.32	28.13	30.37	30.54	32.84	30.30	35.25	36.45	36.73	33.77	33.01	33.38	31.10
India	79.79	74.82	63.34	88.85	87.52	112.33	111.13	105.15	116.77	111.36	111.29	102.25	141.58	133.10	146.33	153.22
Indonesia	165.61	175.81	160.28	134.28	142.39	138.64	129.74	122.14	131.52	144.55	146.19	161.19	144.86	147.48	147.48	147.48
Iran, Islamic Rep.	107.80	99.21	102.86	118.01	115.42	117.58	118.92	133.45	131.08	131.08	131.08	131.08	131.08	131.08	131.08	131.08
Iraq	103.35	95.74	104.12	81.47	84.25	79.62	89.28	94.40	94.91	103.39	107.55	104.24	96.05	106.15	97.44	93.53
Israel	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80	89.80
Italy	89.80	108.25	98.66	94.91	104.73	98.91	102.44	101.85	107.64	97.88	94.94	86.60	70.28	65.59	71.42	67.59
Jamaica	46.05	50.74	56.79	64.30	60.67	57.78	60.73	69.32	77.34	74.91	82.52	84.39	83.76	78.81	85.69	91.29
Japan	61.38	63.66	65.11	64.50	68.86	66.40	63.51	62.05	64.41	64.73	70.50	72.37	74.96	63.46	70.32	75.84
Jordan	121.42	122.35	123.41	131.83	134.29	138.23	133.15	144.88	144.76	143.24	144.26	143.23	147.95	136.04	132.86	138.40
Kazakhstan	83.51	84.45	91.06	85.73	89.61	94.97	88.47	90.16	92.42	100.34	99.20	91.46	78.85	78.55	85.95	96.51
Kenya	64.71	65.42	53.27	60.99	74.46	76.48	76.90	80.96	80.96	80.96	76.21	68.19	73.98	67.24	76.57	85.40
Korea, Rep.	47.92	47.26	55.77	69.39	64.09	64.11	59.71	59.71	56.38	56.71	54.73	51.71	53.38	48.44	50.36	51.98
Korea, Dem. Rep.	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74	34.74
Kuwait	91.92	86.07	92.60	96.08	94.01	113.73	108.42	85.26	81.80	87.29	91.43	94.48	86.56	91.16	98.34	90.54
Laos	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05	54.05
Latvia	67.04	65.57	56.47	58.12	68.59	63.95	66.69	72.06	65.82	66.80	84.87	72.94	71.46	62.28	76.41	68.82
Lebanon	67.04	65.57	56.47	58.12	68.59	63.95	66.69	72.06	65.82	66.80	84.87	72.94	71.46	62.28	76.41	68.82
Lesotho	59.75	60.89	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96	61.96
Lithuania	103.75	80.59	83.07	92.91	87.05	111.50	92.84	97.82	93.84	110.40	111.42	117.69	136.37	139.87	141.61	144.69
Luxembourg	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33	249.33
Macao	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78	40.78
Macao SAR, China	100.78	103.46	103.46	98.65	110.87	111.19	111.19	124.76	133.60	140.84	137.51	115.34	115.34	132.03	144.45	147.33
Madagascar	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25	104.25
Malaysia	128.34	124.09	123.73	113.92	107.63	103.14	99.60	113.88	112.38	112.38	113.52	112.38	113.52	107.05	114.14	114.14
Maldives	130.85	127.89	122.96	119.44												

Country Name	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
St. Vincent and the Grenadines	130.42	141.44	147.04	160.09	145.95	147.65	146.98	151.94	151.72	152.98	144.22	158.78	148.03	142.64	132.70	131.70	
Sudan	54.80	30.36	26.00	23.13	29.31	33.73	33.27	34.35	31.84	24.93	17.63	12.96	16.66	11.49	14.69	11.09	15.07
Suriname	132.15	122.45	117.16	112.98	117.43	143.04	131.38	119.11	102.46	92.14	76.64	65.31	56.69	53.70	65.52	86.49	79.95
Swaziland	129.83	142.29	134.04	149.59	162.12	186.65	181.01	169.03	162.57	148.25	149.52	148.54	163.95	157.14	171.00	127.90	129.90
Sweden	55.67	56.12	55.60	54.62	60.89	60.59	60.39	65.74	69.73	69.67	69.34	62.83	63.22	63.42	63.42	60.24	54.71
Switzerland						73.24	72.73	66.45	69.02	72.58	74.79	70.43	69.12	70.90	74.62	70.62	67.81
Syrian Arab Republic	56.51	54.92	60.03	47.01	56.27	54.76	49.60	39.64	40.74	37.17	37.99	34.19	45.51	43.65	54.39	56.29	56.48
Tajikistan														81.49	84.64	62.98	65.42
Tanzania																	
Thailand	41.35	42.94	45.33	44.00	51.87	54.48	53.97	47.55	47.38	48.07	49.16	45.17	57.23	67.41	72.41	75.78	78.47
Timor-Leste																	
Togo	97.10	93.83	93.93	340.86	325.24	307.41	95.20	308.81	92.22	104.59	105.52	95.67	92.12	96.25	88.51	78.81	74.98
Tonga	112.15	93.57	94.04	96.66	95.86	97.78	92.62	92.21	87.83	89.96	102.36	95.59	95.53	89.49	87.91	98.97	83.46
Trinidad and Tobago	88.18	85.97	86.45	83.71	84.41	89.43	82.09	77.00	71.38	63.88	60.98	70.77	65.37	75.17	77.57	73.95	72.45
Tunisia	63.96	63.10	67.59	69.70	80.95	85.84	91.21	84.35	77.06	77.29	70.24	67.49	70.64	83.68	92.01	94.16	85.69
Turkey	15.66	15.53	14.52	11.44	9.10	17.09	21.14	20.86	23.03	32.28	34.83	23.41	31.34	36.21	33.98	30.94	30.48
Turkmenistan																	
Turks and Caicos Islands																	
Tuvalu																	
Uganda	19.57	20.99	15.95	32.53	35.93	45.48	38.14	25.90	22.30	27.02	28.75	28.05	26.29	25.35	26.05	26.61	29.40
Ukraine																	
Uruguay																	
United Arab Emirates																	
United Kingdom	52.26	56.97	58.54	55.03	55.02	51.82	50.24	50.42	51.76	56.45	56.10	51.61	51.42	48.06	50.86	50.14	47.15
United States	16.10	16.62	16.97	17.54	18.98	20.76	20.07	18.17	17.27	18.14	17.19	17.47	18.57	19.71	20.11	20.55	20.57
Uruguay	37.06	39.64	42.56	40.00	38.00	35.66	34.24	31.62	49.29	47.96	47.86	46.48	40.85	39.79	41.19	41.63	38.55
Uzbekistan																	
Vanuatu																	
Venezuela RB	50.75	50.87	53.25	51.96	50.63	50.60	48.76	46.94	30.72	45.59	42.18	40.06	44.81	47.80	55.21	59.63	57.58
Vietnam																	
Virgin Islands (U.S.)																	
West Bank and Gaza																	
Yemen, Rep.	92.85	81.72	81.27	70.48	81.86	86.80	69.78	64.16	64.41	68.30	73.64	86.02	75.16	59.47	60.63	72.47	71.86
Zambia	47.20	41.56	41.61	42.01	44.46	49.89	45.33	34.15	35.92	41.37	44.21	45.57	45.29	44.10	45.06	45.66	51.05
Zimbabwe																	

Country Name	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2005	2007	2008	2009	2010	2011	2012
St. Vincent and the Grenadines	119.06	128.74	127.86	125.70	95.58	89.42	84.98	85.87	87.40	89.17	88.06	89.81	92.17	86.07	84.11	82.85	
Sudan	23.21	17.86	21.88	24.71	29.40	24.19	31.40	32.00	37.79	47.61	46.61	44.99	44.42	36.31	37.46	34.81	
Suriname	54.11	59.99	83.60	60.87	54.93	78.00	58.38	65.30	74.22	75.58							
Swaziland	139.99	137.50	151.95	146.27	162.34	183.92	196.74	202.85	172.40	178.26	155.63	152.63	128.04	134.25	127.22	141.27	
Sweden	70.51	76.65	79.41	79.70	86.69	85.90	81.99	80.22	83.73	89.04	94.12	96.28	100.31	89.43	92.78	93.73	91.28
Switzerland	67.60	73.75	75.29	77.69	84.83	84.88	80.35	79.38	88.52	93.62	98.81	97.44	97.44	89.69	92.20	91.64	
Syrian Arab Republic	69.91	66.22	61.42	64.31	63.97	64.61	68.61	62.04	79.87	82.01	78.23	76.48	73.57	60.22	71.08		
Tajikistan	156.63	181.13	106.92	133.58	199.68	146.35	141.55	136.86	128.22	78.80	80.34	89.31	88.50	89.56	70.09	73.86	
Tanzania	51.88	41.91	37.42	35.38	33.49	38.29	37.42	41.37	45.72	50.95	58.26	65.34	63.93	58.38	66.40	81.27	
Thailand	84.78	94.60	101.87	104.02	124.92	125.22	121.70	124.58	136.54	148.25	143.80	138.46	150.33	128.16	135.14	145.35	148.83
Timor-Leste																	
Togo	77.42	73.78	74.99	67.89	81.99	82.29	85.59	102.48	96.43	98.70	94.32	92.41	87.54	89.09	97.47	97.59	
Tonga	78.73	75.40	79.30	61.56	62.26	62.36	73.71	72.93	73.53	75.35	65.51	67.65	71.74	77.87	71.20	78.48	
Trinidad and Tobago	92.81	111.20	102.28	94.18	104.56	99.91	95.01	90.04	96.72	104.84	118.67	102.87	101.11	90.12	91.88		
Tunisia	85.72	80.50	75.98	77.91	82.46	89.55	85.34	82.39	86.95	90.25	93.94	104.27	115.70	94.04	104.98	104.70	106.57
Turkey	49.37	54.97	41.52	38.73	43.19	50.76	48.80	47.03	49.74	47.21	50.25	49.81	52.25	47.74	47.97	56.61	58.00
Turkmenistan	149.99	111.23	103.47	139.63	176.44	158.26	122.46	118.92	121.28	112.80	108.01	114.09	104.43	119.84	120.79	123.16	
Tuvalu																	
Uganda	35.39	34.16	30.04	36.02	32.75	35.33	36.28	36.59	35.46	38.99	43.63	46.78	56.26	58.91	57.68	58.13	
Ukraine	93.86	84.24	86.05	101.95	119.86	109.29	105.79	112.93	114.91	102.12	96.10	95.21	101.83	94.42	103.96	114.90	110.27
United Arab Emirates																	
United Kingdom	58.44	56.64	53.83	53.73	57.27	56.85	55.25	53.95	53.80	56.73	60.86	56.50	61.92	59.13	63.23	66.57	65.72
United States	21.63	24.35	23.68	24.09	24.95	23.71	22.98	23.32	25.25	26.53	27.87	28.91	30.97	25.64	29.13	31.73	
Uruguay	39.53	37.71	35.64	33.39	36.71	36.31	40.03	51.76	61.48	58.88	61.97	59.21	65.21				
Uzbekistan	61.86	57.04	45.29	38.55	46.11	55.72	60.16	67.85	72.86	66.52	68.64	76.20	84.36				
Vanuatu	99.08	102.54	94.74	91.23	89.16	87.77	91.70	91.57	88.45	100.17	89.54	88.45	102.78	105.39	99.37	95.01	
Venezuela, RE	57.84	51.25	43.60	42.07	47.86	42.14	48.58	50.58	55.37	60.13	58.67	56.20	51.83	38.52	46.14	49.64	50.40
Vietnam	92.71	94.34	97.00	102.79	112.53	111.51	118.77	126.95	139.02	142.90	151.77	169.64	171.05	146.95	165.34	178.13	179.98
Virgin Islands (U.S.)																	
West Bank and Gaza	90.48	87.10	89.92	96.81	87.16	86.38	86.77	84.26	83.34	82.24							
Yemen, Rep.	85.94	81.38	73.71	72.00	75.44	70.89	74.73	74.38	71.85	76.77	82.08	79.12	80.25	68.02	65.07		
Zambia	70.20	64.13	61.47	64.98	66.83	72.47	70.16	69.71	77.76	71.22	68.60	80.11	72.64	67.18	81.67	83.08	
Zimbabwe	72.07	82.21	86.51	70.92	74.07	67.90	66.61	70.45	76.04	76.04	82.82	84.17	109.52	88.96	126.12	137.25	

Source: World Bank Group