

Chapter 4

Data Analysis Results

As this research is aimed to study (1) the compatibility of JCOMC regarding sales with CISG as compared with TCC in the same aspects, (2) the incompatibility of TCC regarding sales with domestic commercial sales and international sales, and (3) the significance of Thailand in developing Thai sales law in the future, its data analysis results are thus divided into three following parts.

Part I: The result of the compatibility of JCOMC regarding sales with CISG as compared with TCC in the same aspects

Part II: The result of the incompatibility of TCC regarding sales with domestic commercial sales and international sales

Part III: The result of the significance of Thailand in developing Thai sales law in the future

Part I: The result of the compatibility of JCOMC regarding sales with CISG as compared with TCC in the same aspects

As all presented in Chapter 2, JCOMC, on selected provisions and hereunder divided into 3 categories, is primarily compatible with CISG but not TCC as follows:

(1) Application, Commercial Transaction, and Sales Conducted by Merchants

JCOMC is in line with CISG as they were designed to apply only to commercial sales which are distinct in natures from non-commercial sales whereby the elements of 'commercial transaction' and 'sales conducted by merchants' also come into play. This is not in the case of TCC which was designed to apply to both 'civil' or 'non-commercial sales' and commercial sales¹ (without focusing on those elements) which currently causes legal obstacle in Thailand and a law reform regarding sales law has been called for since 1994.

(2) Offers to Contract in Direct Communication and at Distance, Duty of Party Receiving Offer to Contract to Give Notice of Acceptance or Refusal, and Duty of the Party Receiving Offer to Contract to Take Custody of Goods

¹ Under TCC means 'domestic civil or non-commercial sales' and 'domestic commercial sales'.

JCOMC is in line with CISG as all of these four scenarios regarding the ‘Formation of Contract’, which are common practices between merchants, have been accommodated in CISG. In TCC, only the first two scenarios have been found, not the other two which accommodates the commercial practices of ‘regular sales’ and ‘regular practices by merchants’. This reveals another nature of TCC’s non-focusing on commercial sales.

(3) Right of Retention between Merchants, and Depositing and Auctioning Off of Object of Sale by Seller

JCOMC is in line with CISG as similar obligations which are significantly vital for commercial sales are provided therein. Under TCC, even though there are similar provisions provided for, lacks of particular commercial practices between merchants are found if compared with JCOMC above, i.e. ‘retaining negotiable instrument’, ‘depositing the goods’, ‘putting the goods up for auction without issuing notice to the buyer’. This also reveals another set of the incompatibility of TCC in this regard.

As of the above, the result is being that JCOMC regarding sales is compatible with CISG in which they both focus on commercial sales, but not TCC which does not focus as such.

Part II: The result of the incompatibility of TCC regarding sales with domestic commercial sales and international sales

According to the preceding Part I and other aspects presented in Chapter 2, TCC is found to be incompatible with the natures of domestic commercial sales and international sales in Thailand envisaged in the 1994 Supreme Court’s decision because it was designed some 100 years ago at the time when Thailand’s economy was based on agriculture, not trade and commerce as of today. Even though such Supreme Court decision was about international sales but it could also happen with a mere domestic commercial sales where the parties are in different places in Thailand resulting which any of those 3 elements under Section 456, Subsection 3 may not be encountered as well.

As of the above, the result is being that TCC regarding sales is not compatible with domestic commercial sales and international sales.

Part III: The significance of Thailand in developing Thai sales law in the future

According to the preceding Part I and other aspects presented in Chapter 2, it reveals that the only set of sales law under TCC which is used to apply to every type of sales by Thai courts, i. e. civil or non-commercial, commercial and international is creating legal obstacle as envisaged in the 1994 Supreme Court's decision. As a consequence, a law reform regarding Thai sales law is vitally needed to overcome its changing economy from civil or non-commercial to commercial sales, as well as, international sales in a globally economy that Thailand is now encountered and depended on.

As of the above, the result is being that Thailand undoubtedly needs to develop its sales law in the future.