



International Business Alert - Fall 2009

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International Trade News

U.N. Convention Regarding Carriage of Goods by Sea Signed by Nineteen States

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("the Rotterdam Rules"), which has opened for signatures since September 23, 2009, has enjoyed widespread support and has already been signed by 19 states, including the United States. The Rotterdam Rules are the result of intergovernmental negotiations that took place between 2002 and 2009 within the United Nations Commission on International Trade Law. They were adopted by the General Assembly of the United Nations on December 11, 2008.

The Rotterdam Rules are an update to earlier conventions and were seen as necessary given that an estimated 90% of maritime shipping is international and 80% of world trade is conducted by sea. The Rotterdam Rules describe the rights and obligations of all parties with an interest in the carriage of goods by sea and bring more clarity regarding who is responsible and liable for what, when, where and to what extent. It is hoped that the application of the new convention will make international trade easier and lead to a reduction in costs.

States that have signed the Rotterdam Rules now must ratify the convention to ensure its use in the industry. More information regarding the [Rotterdam Rules](#)—including the text of the convention—may be obtained on the [website](#) of the United Nations Commission on International Trade Law.

Directorate of Defense Trade Controls Releases Guidelines for Preparing Electronic Agreements

The U.S. State Department Directorate of Defense Trade Controls (DDTC) has released new guidelines for submitting agreements to the DDTC for review and adjudication. National Security Presidential Directive 56, "Defense Trade Reform," dated January 22, 2008, mandated the commitment of additional financial and other resources, as well as procedural reforms, to expedite the processing of export license applications for items controlled by the U.S. Munitions List. The Directive also requires the Department of State to support other Departments' actions in this area. Using the additional resources committed as a result of NSPD-56, the DDTC made the electronic submission system available on June 30, 2009.

According to the DDTC, the guidelines are "intended to serve as an aid in applying the International Traffic in Arms Regulations (ITAR); to provide clarity to Defense Trade Policy as it pertains to Agreements; and to establish a standard basis for submissions of agreements and related correspondence." Thus, the Guidelines discuss both technical and substantive requirements of the agreements to be submitted electronically.

The Guidelines require additional work from exporters--most notably through the submission of a DSP-5--and they discuss submission of agreements in paper format before electronic submission becomes mandatory in 2010. Thus, exporters who must comply with ITAR should be aware of and familiar with the Guidelines. The full Guidelines are available from DDTC's [website](#).

Lacey Act Amendments: Implications for Organizations with Global Supply Chains

The Lacey Act, amended as of May 22, 2008, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant or plant product that was illegally sourced from a U.S. state or tribal land or any foreign country. Prior to the recent amendments, the Act did not apply to all international traffickers of plants; instead, it only covered plants native to the U.S. Thus, provisions of this Act now apply to a broad range of plant products imported from abroad such as timber, furniture, wood pulp, paper and paperboard, books, musical instruments, tools, products manufactured from plant-based resins, pharmaceuticals, and plant-based textiles, among others. Additional provisions will make it unlawful to import covered plants and plant products without filing an import declaration. The U.S. Department of Agriculture recently announced a phase-in schedule of enforcement of the declaration requirement for goods of, or containing, plants or plant products.

Organizations and individuals will now be held accountable for ensuring that foreign sourced materials were obtained in compliance with both U.S. and foreign laws. A party need not be the one who violated the foreign law; the plants or timber, and the products made from the illegal plants or timber, become "tainted" even if someone else commits the foreign law violation. Even without actual knowledge, liability may attach if in the exercise of due care, the defendant should have known of the violation. Penalties for violating the Act can include fines, incarceration or forfeiture of products. More information concerning the amendments and the declaration form can be found [here](#).

Dinsmore & Shohl is actively helping clients manage their due diligence protocols and compliance mechanisms in preparation for enforcement of the Act. Please contact [Harvey Cohen](#) for assistance with understanding the implications of the amendments.

Upcoming Events

Exporting Conference to be Held at Greenbrier Resort

The West Virginia Export Council, in cooperation with the U.S. Commercial Service, the Manufacturing Extension Partnership, and the West Virginia Development Office International Division will host "Expotech - Doing Business in the Americas," a conference to be held on December 7-8, 2009 at the Greenbrier Resort located in White Sulphur Springs, West Virginia. The conference is a two-day intensive program designed to promote growth in Latin American and other foreign markets. Topics to be discussed include business outlook and market opportunities, export strategy, legal and financial considerations, practical approaches to market entry, and local resources for export assistance.

Dinsmore & Shohl's Jacob Manning will present at the conference on legal considerations and export financing. More information regarding the conference may be found at the U.S. Commercial Service's [website](#).

Panel Discussion to Focus on Business Climate in China

Dinsmore & Shohl will present "China: Overcoming Challenges," a panel discussion regarding business opportunities in China, on October 21, 2009 in the firm's Cincinnati office. The event will feature Lillian Xiao, a member of Deloitte's International Tax Practice, who will address the impact of China's tax and regulatory changes. Wang Jun, Gaopeng & Partners, will appear live via video conference from China to provide insight into several areas, including the employment pitfalls companies should avoid. Finally, Dinsmore & Shohl's Joel Cloud will address the intellectual property challenges presented by the marketplace and cover some of the strategies for combating fraud and protecting IP assets.

The event is designed for executive officers, in-house counsel, tax, human resources, and IP personnel and will be moderated by Dinsmore & Shohl's Harvey Cohen. Registration and more information may be found [here](#).

European Trade Mission in Milan, Italy Set for January 2010

The European American Chamber of Commerce, in partnership with the U.S. Commercial Service, will host a European Trade Mission to Milan, Italy on January 30–February 2, 2010. The five-day itinerary includes Market Briefings with the U.S. Commercial Service, "Matchmaker Meetings," dinners, and receptions and is intended to link U.S. businesses with prospective trade partners in the same industry sectors. The United States is Italy's 11th largest supplier, and U.S. firms enjoy good opportunities in sectors where new regulations or programs are creating demand, with new products and services with which there is little or no domestic competition, and where American products offer clear technological advantages.

Registration for the Trade Mission includes the U.S. Commercial Service's Gold Key Matching Services and a potential add-on in the U.S. Pavilion at the MADE Expo 2010. The industry theme for that event is architectural, construction and engineering services, building products, construction equipment. Registration and more detailed information may be found on the EACC [website](#).

Harvey Jay Cohen to Lead Panel Discussion on Anti-Bribery Best Practices

Harvey Jay Cohen will chair a panel discussion at ALFA International's 2009 International Law Practice Group Seminar on October 26, 2009 in Miami, Florida. Cohen will lead a discussion of the Foreign Corrupt Practices Act and Anti-Bribery Best Practices. Joining Cohen for the discussion will be Fernando Jamarne, of Alessandri & Compania, one of Chile's top law firms; Mark K. Anderson, Counsel for Caterpillar, Inc.; Joshua Frank, Vice President of Compliance, Labor & Employment for DHL Global Business Services; and Monica L. Johnson, Director and Senior Attorney for Burger King Corporation. The panel discussion is part of a full-day educational seminar geared towards corporate and non-U.S. counsel. A full description of the program may be found on ALFA International's [website](#).

Jacob Manning to Speak at Letter of Credit Conferences

On October 29-30, 2009, Dinsmore & Shohl attorney Jacob Manning will be speaking at two events in New York sponsored by the Institute of International Banking Law & Practice (IIBLP) and co-sponsored by Bingham McCutchen, LLP. The first, IIBLP's annual LC Law Summit, brings bankers and lawyers together to discuss recent cases, events, and laws affecting letter of credit practice. The second, the Guarantee and Standby Forum—a new event sponsored by IIBLP—will focus on guarantees and standby letters of credit and will offer an interactive discussion with leading world experts in the field. More information regarding the LC Law Summit and the Guarantee and Standby Forum may be found on IIBLP's [website](#).

Recent Articles

E-Verify Federal Contractor Rule Effective September 8th

Though delayed by a federal lawsuit, the federal government's "E-Verify" employee verification program took effect in September. As a result, businesses contracting with the federal government now must verify the employment eligibility of all persons hired during the contract term and all employees performing work on the contract within the United States. The rule covers prime contracts longer than 120 days and valued above \$100,000 and subcontracts for services and construction over \$3,000 if the prime contract contains the E-Verify clause.

Dinsmore & Shohl's Immigration Group provided important information about the E-Verify program in its August Immigration Insights. The article may be found in its entirety [here](#).

Firm News

Dinsmore & Shohl Among Companies Recognized for Work in Exporting

Dinsmore & Shohl was one of 27 companies recently recognized by Ohio Governor Ted Strickland with the Governor's Excellence in Exporting Award. Since 1986, the awards, have recognized companies and organizations that have shown superior performance in exporting or heightened awareness of exporting as a vital component of Ohio's economy. The awards were announced at the Ohio Global Summit, an event designed to provide exporters successful strategies from Ohio-based international business experts. The full list of the 27 Governor's Excellence in Exporting Award winners may be found [here](#).

Harvey Jay Cohen Elected to Leadership Role in International Bar Association

Harvey Jay Cohen has been elected an officer of the Closely Held and Growing Business Enterprises Committee of the International Bar Association. The Committee is a part of the IBA's Corporate Law Section and is its second largest committee. In his role as an officer, Cohen will plan conferences for members of the IBA and coordinate the activities of the committee. During the IBA's annual meetings in Madrid, Spain, held October 4-9, 2009, Cohen participated in a panel discussion for the Committee entitled, "Something's gotta give—balancing the rights of majority and minority interests in the private enterprise."

Supply Chain Contracting Focus of Discussion at Corporate Counsel Institute

Harvey Jay Cohen led a panel discussion at the Ohio State Bar Association's Corporate Counsel Institute on October 2, 2009 at the Wedgewood Country Club in Powell, Ohio. The panel discussion, "Supply Chain Contracting Best Practices: International and National Contracts," featured advice on basic issues in negotiating contracts, drafting tips, and enforcement. Cohen was joined on the panel by Rick L. Ball from Standard Register Co. in Dayton, and Paula S. Carter from Honda of America in Raymond.

Dinsmore & Shohl Attorneys Serve as Panelists at International Bar Association Meeting

Michael Hawkins served as a panelist for two programs at the recent International Bar Association conference in Madrid. In the first, Michael discussed with other panelists, Employment Rights as Human Rights. The panel addressed issues of human rights violations, sources of law that situate employment rights as human rights, remedies available for human rights violations in the workplace, and mechanisms to enforce human rights in the workplace. As a member of the Dispute Resolution Section, Michael also was a panelist during the Mediation Techniques Workshop. Michael provided commentary regarding different forms of power imbalance in the negotiation/mediation process.

In addition, Douglas Halpert served as a panelist at the recent International Bar Association conference in Madrid. The panel addressed the issues of how courts and bar associations around the world accommodate lawyers with disabilities to varying degrees (or not at all). Douglas provided an overview of Ohio's requirement that its lawyers attend training on substance and alcohol abuse, and described its support program for lawyers with problems in those areas. He also reviewed recent disciplinary decisions against lawyers whose negligence arose at least in part due to problems with alcoholism or drug abuse.

Dinsmore & Shohl Successfully Assists Non-U.S. Entity in Obtaining Discovery in U.S.

Dinsmore & Shohl attorneys Richard Porotsky, Harvey Jay Cohen, and Kurt Hunt successfully obtained

information from U.S. entities for use in a foreign proceeding on behalf of the foreign plaintiff. By obtaining a court order, issued pursuant to Title 28, Section 1782 of the United States Code, they were able to compel U.S. businesses and banks to provide financial information that the plaintiff needed to prosecute its claim in a foreign court. Dinsmore & Shohl's International Business Transactions Group is proud to have assisted more than 100 foreign-owned businesses conducting business in the United States in matters such as this one.

Attorney Richard Porotsky Representing Client in \$97 Million Claim in Canada

Dinsmore & Shohl Attorney Richard Porotsky is currently serving as co-lead counsel in a case pending in Ontario, Canada, in which the plaintiff alleges US\$97 million in damages. The claim involves a Sale and Purchase Agreement, following which the parties have disputed earn-out provisions and accounting issues. The case also involves the enforceability of an international arbitration agreement, with arbitration to be conducted in Ontario. Porotsky is one of a number of attorneys within Dinsmore & Shohl's Business Litigation Group to maintain a focus on alternative dispute resolution, including arbitration, mediation, and neutral evaluation.