

THE SCOPE OF TRADE IN GOODS AND THE INTERNATIONAL LAW GOVERNING TRADE IN MACAU SAR

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The market size and unique characteristics of the legal system of Macau SAR raise interesting questions regarding the scope of international trade and the application of international law. Macau being one of the very small territories¹ with a population of around six hundred thousand people² raises the question of significance of its international trade volume. This chapter addresses the question specifically in the context of trade in goods by examining the significance of merchandise trade in the overall trade volume of Macau SAR since the beginning of the 21st century.

I INTRODUCTION

After Macau SAR liberalised its gaming market, it has witnessed a momentous economic growth and its staggering growth rate has led to its forecast ranking as the as one of the fastest growing economy of the world in 2013³. Since much of

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- 1 Macau Land size amounted to only 29.2 square kilometers as of 2010, which has actually increased substantially from its size of 15.5 square kilometers in 1984 and marginally from its size of 27.3 square kilometers as it stood in 2003. However, various land reclamation projects are in the pipeline or at planning stage, which are expected to increase the total land size further. See Alexandra Lages "Land Reclamation to be done in the next 5 years", *Macau Daily Times*, 18 June 2010 available online at <www.macaudailytimes.com.mo/macau/13558-Land-reclamation-done-the-next-years.html>. Also see DSEC, *A Graphic Review of Macao's Transformation 1984-2003*, Macau: Statistics and Census Service, Government of Macau Special Administrative Region, November 2004, 117.
- 2 The total population of Macau SAR as of the third quarter of 2013 stood at 598, 200 people, which consisted of both the residents as well as non-resident workers living in Macau. See DSEC, *Demographic Statistics-3rd Quarter 2013*, Macau: Statistics and Census Service, Government of Macau Special Administrative Region, November 2013.
- 3 Macau was predicted to be the second fastest growing economy of the world by The Economist with a 13.5% GDP growth only next to Mangolia during the same forecast period. See The Economist, *The Fastest-growing Economies of 2013: Speed is not Everything*, *The Economist*, 2 January 2013 available online at <www.economist.com/blogs/theworldin2013/2013/01/fastest-growing-economies-2013>.

this impressive growth is attributed to the services market in Macau, which is dominated by Gaming and allied tourism and related services, the role and significance of trade in merchandise in the overall economic activity of Macau remains as a perplexing question. Moreover, in a relatively small market like Macau SAR, discovering the key characteristics of the goods trade like the nature of the goods traded, the goods imported for local consumption vs re-exports, key trading partners etc., are equally critical for assessing potential trade. The purpose of determining the magnitude and characteristics of international trade in goods in Macau SAR, is not only relevant for understanding the nature of its goods trade but also to demonstrate the significance of legal regime governing the unique characteristics so identified.

The object of this chapter is not to examine in detail the legal regime governing trade in goods in Macau SAR. Rather, the purpose of the second part of this chapter is limited to highlight the role and scope of international law in governing trade in goods in Macau SAR. This question gains significance due to the unique characteristics that define the legal system of Macau SAR and its international legal personality. Macau is a special administrative region of Peoples Republic of China (PRC) characterized by one country, two systems principle. This principle formulated by Deng Xiaoping is the major state policy of PRC towards the reunification of Macau from the Portuguese administration of the territory, whereby now the sovereignty lies with PRC yet Macau enjoys freedom on several matters. The principle not only provides greater economic freedom to the SAR but also recognizes the co-existence of two different market and legal systems governing the economies of PRC and Macau. Macau possesses a free market system and a civil law legal system influenced by the Portuguese and other European legal traditions distinct from those followed in the mainland PRC. Under the Sino-Portuguese Joint Declaration⁴, the treaty instrument leading to the

4 Under 1987 Joint Declaration between PRC and Portugal, the PRC by virtue of the principle of one country, two systems has undertaken an obligation to follow a set of key basic policies regarding Macau for fifty years after the handover of Macau. Some of the pertinent policies relevant to our discussion in this chapter are the result of the following undertaking by the PRC. The Macao SAR will enjoy a high degree of autonomy, except in foreign and defence affairs and will be vested with executive, legislative and independent judicial power, including that of final adjudication. The existing social and economic systems in Macao will remain unchanged and the laws in force in Macao will remain basically unchanged. All rights and freedoms of the inhabitants and other persons in Macao will be guaranteed by law. The Macao SAR will be given the freedom to establish mutually beneficial economic relations with other countries with due regard being given to the economic interests of the countries concerned. Macau SAR may on its own maintain and develop economic and cultural relations and in this context conclude agreements with states, regions and relevant international organizations. Macau SAR will remain as a free port and a separate customs territory in order to develop its economic activities with a free flow of capital and circulation of its own freely convertible currency. The Macao SAR will continue to have independent finances and will not be subjected to taxation by the PRC. See

Portuguese handover of Macau back to PRC as well as the Basic Law of Macau⁵, which is the constitutional instrument governing Macau SAR, the characteristics of the market and legal system of Macau SAR will remain unchanged until 1949.

By virtue of the one country two systems principle, the Macau SAR possesses some interesting characteristics in its international economic and trade relations. The Macao SAR may on its own conclude and implement agreements with foreign states and regions and relevant international organizations in certain fields including trade and economic fields⁶. It may also participate in international organizations and conferences in the fields that are not limited to states. However, in order to participate in international organizations or conferences in the fields which are restricted to states, Macau SAR representatives will have to either join the delegations of the PRC or participate in other capacity as may be permitted by the government of PRC and the international organizations or conference concerned⁷. Interestingly, the participation of Macau SAR in international organizations in any appropriate capacity is not dependent on the membership of the PRC in the relevant organization⁸. Similarly, the application of international treaties to Macau SAR is also not determined by the fact whether PRC is a party to the relevant treaty or not.

Article 2 (1)-(12) of the Joint Declaration of the Government of the People's Republic of China and The Government of the Republic of Portugal on the question of Macao 1987, available online at <http://bo.io.gov.mo/bo/i/88/23/dc/en/>

- 5 The Macao SAR was established in accordance Article 31 of the PRC Constitution and accordingly the Basic Law of Macau SAR was adopted by the PRC National People's Congress (NPC) in 1993 to ensure the implementation of the one country two systems principle and the basic policies undertaken to be protected by the PRC in the Sino-Portuguese Joint Declaration of 1987. Article 5 of the Basic Law of Macau SAR not only guarantees that the previous capitalist system and way of life in Macau will remain unchanged for 50 years but also specifically ensures that the socialist system and policies shall not be practised. Moreover, the systems and policies practiced in the Macao SAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies are all required to be based on the provisions of the Basic Law. See Article 11 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China available online at <http://bo.io.gov.mo/bo/i/1999/leibasica/index_uk.asp>.
- 6 The other fields that are explicitly recognized in the Basic Law of Macau which Macau could enter into and implement agreements on its own are financial and monetary, shipping, communications, tourism, cultural, science and technology, and sports. See Article 136, Basic Law of the Macao SAR.
- 7 See Article 137, Basic Law of Macau SAR.
- 8 The Basic Law of Macau SAR contemplates that PRC would take necessary measures to enable Macau SAR to retain its participatory status in international organizations in which it is a member and would also facilitate the continued participation of Macau SAR in the appropriate capacity in those organizations in which Macau is a participant but PRC is not a member.

With regard to the treaties to which PRC is a party, the government of PRC has the power to decide whether to extend its application to Macau or not⁹. Interestingly, treaties to which PRC is not a party but were implemented in Macau by Portugal before the handover continued to be applied in Macau SAR. Moreover, the government of PRC could also authorize or assist the Macau SAR to make appropriate arrangements for the application of other relevant treaties¹⁰. Macau SAR also enjoys the freedom to establish economic and trade missions in foreign countries on its own¹¹. The unique characteristics that define the international legal personality of Macau have resulted in some diverse circumstances with regard to application and relevance of international trade regimes to Macau SAR. The divergence is particularly evident with regard to the relevance of World Trade Organization (WTO) regime viz a viz United Nations Convention on Contracts for the International Sale of Goods (CISG) 1982 for Macau SAR. On the one hand, Macau SAR being an independent custom territory is a founding member of the WTO even before PRC was admitted as a WTO member and the all relevant agreements part of the single package of WTO applies to Macau. On the other hand, CISG does not apply to Macau SAR in spite of the fact that PRC is a party to convention and the same entered into force and continued to be applied in PRC since 1988¹². Due to such divergent application of international legal instruments governing international trade, the second part of the chapter will examine the scope of international law governing trade in Macau SAR. The chapter will conclude with a brief examination of the compelling reasons why the divergence of application of international legal instruments governing trade to Macau and PRC should be addressed.

II WHAT IS THE SIGNIFICANCE OF INTERNATIONAL TRADE IN GOODS FOR MACAU BEING AN EMERGING SERVICE MARKET?

In spite of being one of the smallest territories in the world, Macau has been identified as the world's fastest growing economy in 2010 and 2011¹³ and

9 Albeit to be carried out based on the circumstances and the needs of Macau SAR and in consultation with the government of the SAR according to the Basic Law of Macau SAR, Article 138.

10 Ibid.

11 Such missions could be either official or semi-official in nature and any such establishment has to be reported to the government of PRC for record. See Article 141, Basic Law of the Macau SAR.

12 The PRC signed CISG in 1981 and ratified the convention in 1986.

13 The World Bank data on the annual percentage growth rate of GDP reveals that Macau GDP growth during 2010 and 2011 level stood at 27.5% and 21.8% the highest among the economies

forecasted to be again one of the fastest growing economies of 2013¹⁴. Since much of its impressive growth is attributable to the service industry in general and gaming industry in particular, the significance of goods trade for Macau is prone to be neglected. This is an important parameter that needs to be ascertained at the very outset in order to investigate the relevance of a uniform law like CISG for Macau SAR. This section of the chapter will first identify various critical indicators arising out of data pertaining to merchandise trade of Macau for more than a decade. The foregoing discussion is not only intended to establish the significance of goods trade for Macau but also to highlight some critical trading partners of Macau in order to highlight how the diversity of laws and legal standards between them could emasculate commercial confidence.

Table 1: Total Values of Import and Export of Goods of Macau SAR 2000-2012

Source: Compiled from Statistics and Census Service of Government of Macao SAR

Year	Total Values of imports of goods		Total Values of exports of goods	
	In millions MOP (Macau Patacas)	Variance	In millions MOP (Macau Patacas)	Variance
2000	18,097.56	~	20,380.42	~
2001	19,170.36	5.9	18,472.95	-9.4
2002	20,323.39	6.0	18,925.41	2.4
2003	22,097.23	8.7	20,700.10	9.4
2004	27,904.02	26.3	22,561.08	9.0
2005	31,340.29	12.3	19,823.34	-12.1
2006	36,527.30	16.6	20,461.27	3.2
2007	43,113.86	18.0	20,430.57	-0.2
2008	43,034.22	-0.2	16,025.40	-21.6
2009	36,901.98	-14.2	7,672.54	-52.1
2010	44,118.40	19.6	6,959.95	-9.3
2011	62,288.89	41.2	6,970.93	0.2
2012	70,927.78	13.9	8,159.67	17.1

of the world listed by the World Bank. See The World Bank, GDP growth (annual %), available online at <<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>>.

14 Although, the prediction whether Macau or Mongolia will be the fastest growing economies of the world in 2013 kept changing, Macau remained as one of top economies in the list of fastest growing economies. See for example, contrary to the earlier prediction (*The Economist* 2 January 2013), Macau was also predicted to be the fastest growing economy of the world ahead of Mongolia in 2013 see, Economist.com, "Growers and shrinkers" *The Economist* 3 January 2013 available online at <www.economist.com/blogs/graphicdetail/2013/01/daily-chart-1>.

It is important to take note that Macau's export of goods has been on decline in recent years. The considerable reduction seen since 2008 could be attributed to the global economic crisis. Although, it is plausible to argue that slowdown is due to external factors, the role of internal factors cannot be denied. Macau economy has been clearly shifting its emphasis to the services market that has witnessed a phenomenal growth in the same period, in spite of the global economic crisis. On the other hand, a striking development in Macau's goods trade could be discerned from the above data namely imports growth. During the recent period, while Macau has been experiencing export slowdown in goods, its imports of goods have been witnessing a double digit growth often offsetting the export slow down with a considerable margin. From this divergence between exports and imports in the goods sector it is very clear that the overall size of the goods trade has reached new unprecedented heights. Therefore, the significance of goods trade for Macau is arguably increasing.

After noting the continued significance of goods trade for Macau, it is relevant to examine the distribution of its goods trade volume among different international markets and the regions. It will facilitate the identification of important jurisdictions dealing with Macau in order to take cognizance of pertinent legal issues of CISG or international contracts that may arise with regard to specific jurisdictions.

Table 2.1: Export Values by Main Markets in EU and Americas*Source: Statistics and Census Service, Government of Macao SAR*

Year	European Union				Americas	
	Regional Total	Germany	UK	France	Regional Total	USA
	Total exports of goods	Total exports of goods	Total exports of goods	Total exports of goods	Total exports of goods	Total exports of goods
	million MOP	million MOP	million MOP	million MOP	million MOP	million MOP
2000	5,789.65	1,580.26	1,404.38	1,022.43	10,257.62	9,836.66
2001	4,915.99	1,418.11	1,180.23	786.32	9,362.34	8,907.09
2002	4,395.94	1,411.49	1,027.59	627.52	9,587.75	9,151.46
2003	4,724.56	1,697.33	898.81	690.43	10,726.74	10,320.23
2004	4,888.43	1,865.97	991.61	697.77	11,405.64	10,990.03
2005	3,387.79	1,173.35	741.42	533.47	9,913.51	9,646.80
2006	3,996.74	1,497.07	837.84	677.93	9,342.88	9,021.31
2007	3,721.97	1,297.83	820.72	618.96	8,637.77	8,291.78
2008	1,591.07	648.30	323.72	216.24	6,735.95	6,399.17
2009	631.26	295.81	103.19	88.09	1,471.00	1,308.26
2010	409.36	142.64	64.38	71.94	939.75	782.06
2011	383.26	122.15	47.16	87.98	680.19	555.82
2012	315.52	81.94	34.25	55.25	608.80	507.31

Table 2.1, showing the distribution of goods exports to the two major regions of the world, clearly shows a considerable decline to both Europe and Americas. It is important to note that the slowdown in exporting to both regions is strikingly visible since 2008, a plausible sign of impact of the economic crisis distinctly faced in these regions. Such a conclusion is supported further from an interesting trend that may be noted from the parallel table below exhibiting the major export markets in Asia for Macau during the same period. In contrast to the other two regions, Table 2.2 shows that Macau's exports to the Asian region has not only remained stable over the years but has not shown any drastic decline during the period of the economic crisis. A closer look at the Table 2.2 shows such a contrast and an interesting change of trend in exports with the Asian region, which is an important factor in determining the role of the uniform law like the CISG in improving Macau's trade relations with specific jurisdictions in Asia. While Macau's export of goods to PRC and Taiwan markets has been witnessing a reduction in recent years, the export to Hong Kong market has been on a considerable increase.

Table 2.2: Export Values by Main Markets in Asia*Source: Statistics and Census Service, Government of Macao SAR*

Year	Asia			
	Regional Total	Mainland China	Hong Kong SAR	Taiwan, China
	Total exports of goods	Total exports of goods	Total exports of goods	Total exports of goods
	million MOP	million MOP	million MOP	million MOP
2000	4,045.85	2,073.39	1,329.84	171.17
2001	3,961.30	2,154.96	1,177.56	147.55
2002	4,631.16	2,948.13	1,099.88	129.50
2003	4,869.69	2,844.19	1,361.72	152.56
2004	5,608.26	3,140.40	1,703.71	202.29
2005	5,626.60	2,946.07	1,943.33	182.29
2006	5,950.87	3,035.37	2,292.05	135.57
2007	6,700.86	3,034.07	2,674.44	254.86
2008	6,068.89	1,968.22	3,162.66	217.58
2009	4,815.30	1,117.49	3,014.64	160.66
2010	4,757.34	1,102.36	3,002.56	175.92
2011	4,749.82	1,097.92	3,108.94	102.98
2012	5,954.23	1,368.97	4,095.39	41.82

It is particularly interesting to note that Hong Kong has become the main destination in Asia for Macau goods exports since 2008. Generally, the transactions between Hong Kong and Macau have expanded considerably in the recent years including in service sectors like construction, where more legal issues and questions pertaining to the diversity of laws and legal system of the two distinct jurisdictions are increasingly encountered. This is particularly relevant given the fact that some specific legal challenges involving the two jurisdictions have arisen in the recent years, particularly with regard to the issue of governing law. Similarly, in case of Americas, although Macau exports of goods to this region have reduced considerably over the years, it is important to note that USA has always been the biggest market destination for Macau goods. This factor underlines the need to address relevant legal challenges arising between Macau and USA with regard to governing law issues. Finally, with regard to the exports to Europe, it is important to take note that although the export value to this region in total has been reducing Germany remained as the top destination for Macau exports.

In contrast to the export trade in goods, the imports of Macau from all the three major trading regions have been increasing or at the least remained stable. In the

case of the EU, Table 3.1 clearly shows that imports from the region have been defying the trend in exports and have considerably increased in recent years. Imports from American have been equally impressive and it is again important to take note that the role of the US market in the total imports from the region has been the highest in all the thirteen years shown in the table. This once again indicates the critical need to address relevant legal challenges relating to governing law arising between Macau and USA. Finally, with regard to the imports from Europe, it is striking to take note that the imports from France to Macau have witnessed the highest jump since the economic crisis in 2008. This underlines the growing importance of the French imports for Macau and the ensuing need to address any governing law challenges arising in the context.

Table 3.1: Import Values by Main Markets in EU and Americas

Source: Statistics and Census Service, Government of Macao SAR

Year	European Union				Americas	
	Regional Total	Germany	UK	France	Regional Total	USA
	Total imports of goods	Total imports of goods	Total imports of goods	Total imports of goods	Total imports of goods	Total imports of goods
	million MOP	million MOP	million MOP	million MOP	million MOP	million MOP
2000	1,738.15	359.50	348.41	500.81	1,008.42	819.55
2001	2,411.95	457.39	512.58	805.69	875.10	796.80
2002	2,394.50	377.55	383.78	869.34	918.77	842.43
2003	2,643.27	603.26	408.66	751.38	1,002.33	871.92
2004	3,482.83	1,025.37	449.99	888.83	1,344.10	1,130.60
2005	4,116.58	1,174.88	541.97	1,036.85	1,461.24	1,276.30
2006	4,794.24	1,172.76	684.45	1,472.66	2,242.90	1,997.38
2007	6,762.28	1,914.13	777.76	1,798.59	2,749.86	2,428.98
2008	7,100.97	1,134.14	825.46	2,273.50	2,929.77	2,383.33
2009	7,814.95	1,057.95	758.03	2,947.83	2,672.52	2,217.12
2010	9,960.72	1,321.46	852.06	4,039.82	3,148.70	2,618.97
2011	15,506.51	1,546.02	1,026.80	6,302.08	4,401.17	3,731.82
2012	16,647.27	1,710.72	1,691.51	6,196.39	4,356.70	3,679.62

In comparison with the trend of exports to the Asian markets, Table 3.2 shows that the import of goods from the region has been mainly dominated by the PRC Market. While this underlines the importance of addressing the issue of governing law arising between PRC and Macau, the data also reveals the growing significance of other markets in the region. For example, although Hong Kong is

only the second biggest market in Asia for Macau imports, the growth of the import value from Hong Kong has witnessed the highest jump in recent years especially since the global economic crisis. The fact that the value of Macau imports from Hong Kong has nearly doubled in the past few years, marking a much higher growth than that of the PRC, once again indicates the significance of the need to effectively address governing law challenges between the two SARs. Table 3.2 also indicates the consistent role played by Japan as an origin of Macau imports, which has continued to remain as the third biggest source, over taking Taiwan for the past 11 years since 2002. The significance of the Japanese market for Macau also calls for the need to address any related governing law challenges between the two jurisdictions.

Table 3.2: Import Values by Main Markets in Asia

Source: Statistics and Census, Service Government of Macao SAR

Year	Asia				
	Regional Total	Mainland China	Hong Kong	Taiwan, China	Japan
	Total imports of goods	Total imports of goods	Total imports of goods	Total imports of goods	Total imports of goods
	million MOP	million MOP	million MOP	million MOP	million MOP
2000	14,919.37	7,428.87	2,758.34	1,719.60	1,141.79
2001	15,475.98	8,164.70	2,660.20	1,278.18	1,041.24
2002	16,498.09	8,477.18	2,955.79	1,357.77	1,370.61
2003	17,804.75	9,489.93	2,794.39	1,281.95	1,986.77
2004	22,324.52	12,394.25	2,949.98	1,354.40	2,684.30
2005	24,842.78	13,515.26	3,126.27	1,260.72	3,412.29
2006	28,044.51	16,469.51	3,722.61	1,173.47	3,049.24
2007	31,722.06	18,378.42	4,358.56	1,499.50	3,874.79
2008	30,282.44	16,926.16	4,365.83	1,424.15	3,639.12
2009	23,187.70	11,571.10	4,036.36	1,120.94	3,039.27
2010	26,813.77	13,718.28	4,627.94	1,078.32	3,812.09
2011	36,618.79	19,120.94	7,588.34	1,329.46	3,911.24
2012	43,041.24	23,199.44	8,211.13	1,403.12	4,244.02

Some preliminary conclusions could be drawn from the above analysis of the Macau merchandise data over the past 13 years. It can be concluded that international trade in goods continued to be significant for Macau in spite of some considerable fall in Macau exports in recent years. The fall in exports has been offset by the increase in international imports, which has increased the overall size of the pie pertaining to trade in goods. The analysis also clearly reveals the

significant markets and jurisdictions for Macau SAR in goods trade. The top and significant markets for Macau exports in the three regions include Hong Kong, PRC, USA and Germany. Similarly, the high ranking markets for Macau imports include PRC, Hong Kong, Japan, USA and France. From the above analysis it can be concluded that the top six international markets for Macau namely PRC, Hong Kong, France, USA, Japan and Germany are the key jurisdictions Macau has to deal with in international trade in goods. It is interesting to conclude at the very outset that among the top six jurisdictions identified, CISG is in force in five of them except Hong Kong. This conclusion can be an indication of the relevance of CISG for Macau, as CISG is in force in most of its major trading markets. Moreover, the conclusion consolidates the argument for the need to specifically examine the governing law issues arising in Hong Kong concerning Macau, where CISG is also not in force.

III THE SCOPE OF INTERNATIONAL LAW GOVERNING GOODS TRADE IN MACAU SAR

As discussed earlier, the CISG is one of those international treaties that are applicable in PRC but not formally extended by the PRC to Macau SAR under the Basic Law of Macau. Before examining some legal issues arising with regard to specific international regimes like the CISG and its relevance to Macau SAR, it will be important to identify the scope of various treaty regimes governing goods trade that are already applicable to Macau SAR. Firstly, Macau being a finding member of the WTO is governed by GATT 1994 and the whole series of WTO multilateral agreements governing trade in goods enumerated in Annex 1 to the Agreement establishing the WTO¹⁵. By virtue of its WTO membership, Macau is also governed by the obligations to protect IPR in goods under the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement and obliged to resolve disputes relating to trade in goods under the WTO dispute settlement mechanism¹⁶.

Apart from WTO membership, Macau is also part of several other international organizations that are pertinent to international trade. The significant ones in this regard include the International Monetary Fund (IMF), the International Maritime

15 See Agreement Establishing the World Trade Organization and related Annexes in WTO Legal Texts available online at <www.wto.org/english/docs_e/legal_e/legal_e.htm>.

16 Although Macau has not been a formal party to a trade dispute before the WTO, Macau has sought compensation against USA after its decision to withdraw from its commitment under the General Agreement in Trade in Services (GATS) upon its loss in the online gambling dispute in the case of Antigua v US, which was being negotiated between Macau and USA. See Isaac Wohl, "The Antigua-United States Online Gambling Dispute", *Journal of International Commerce and Economics*, July 2009 at 7 available online at <www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf>.

Organization (IMO), the Customs Co-operation Council, the Hague Conference on Private International Law, the Universal Postal Union (UPU), the World Intellectual Property Organization (WIPO), World Tourism Organization, the International Textiles and Clothing Bureau, International Telecommunication Union (ITU), etc. Several international treaties governing the very important issue of customs administration in international trade are applicable in Macau SAR. Among the 10 different applicable international legal instruments relating to customs, the prominent ones include Convention concerning Customs Facilities for Touring, 1954 and its additional protocol, Customs Convention concerning the Facilities for the importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events, 1961, Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, 1961 and its amendment 2002, and the International Convention on the Harmonized Commodity Description and Coding System, 1986. Macau also implements some important international conventions governing bills of exchange, promissory notes and cheques that are quite pertinent for international trade. Two sets of international conventions and relevant protocols of 1930¹⁷ and 1931¹⁸ governing bills of exchange and promissory notes, and cheques respectively apply in Macau SAR.

Macau also implements four major intellectual property protection treaties other than the WTO TRIPS Agreement, which includes the prominent Paris Convention for the Protection of Industrial Property 1883¹⁹, the Berne Convention for the Protection of Literary and Artistic Works, 1886²⁰, the Universal Copyright Convention, 1952²¹ and the Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957²². Other than these international IPR instruments that enhance the trading environment of Macau SAR, two specific international treaties governing specific segments of

17 These include the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (and Protocol), the Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes (and Protocol) and the Convention on the Stamp Laws in Connection with Bills of Exchange and Promissory Notes (and Protocol).

18 The second set of instruments governing the cheques includes the Convention Providing a Uniform Law for Cheques (and Protocol), the Convention for the Settlement of Certain Conflicts of Laws in Connection with Cheques (and Protocol) and the Convention on the Stamp Laws in Connection with Cheques (and Protocol).

19 As revised in 1967 and amended in 1979.

20 As revised in 1971 and amended in 1979.

21 As revised in 1971.

22 As revised in 1967 and 1977, and amended in 1979 including the 9th edition of the Nice Classification, International Classification of Goods and Services 2003 and 2005.

international trade also apply to Macau SAR. These are the Agreement on Trade in Civil Aircraft, done at Geneva on 12 April 1979 and the Information Technology Agreement, 1996 arising out of the Singapore WTO Ministerial Declaration on Trade in Information Technology Products.

Major international legal instruments governing transportation by Air, Road and Sea also apply to Macau SAR. Macau implements major civil aviation conventions like the Warsaw Convention 1929²³ relating to carriage by air and the Chicago Convention 1944²⁴ relating to international civil aviation and the protocols amending these conventions. The more recent Montreal Convention for the Unification of certain Rules for International Carriage by Air, 1999 also applies to Macau. Although Macau is a party to many maritime instruments, only few of them pertains to the carriage of goods by sea. However, the relevance of those instruments governing carriage of goods by sea is also limited mainly because much of such carriage in Macau goes through transshipment in Hong Kong. Significant instruments relating to carriage of goods applied in Macau include the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924, and the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957²⁵. Macau applies a limited number international instruments relating to road traffic and a regional agreement governing the railway network.

Finally, it is relevant to take note of some pertinent private international law conventions that apply to Macau SAR. Important private international law instruments that would be relevant for international trade includes the Convention relating to Civil Procedure 1954, Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970. As Macau is not a major seat of international arbitration proceedings it is important to

23 See Convention for the Unification of Certain Rules relating to International Carriage by Air 1929. Macau also implements the International Air Services Transit Agreement 1944.

24 See Convention on International Civil Aviation 1944. Macau is also a party to the Convention on the International Recognition of Rights in Aircraft 1948.

25 International Convention for Safe Containers 1972 as well as the 1978 Protocol relating to the Convention for the Prevention of Pollution from Ships, 1973 regulating the harmful substances in packaged forms, or in freight containers, portable tanks or road and rail tank wagons also apply in Macau SAR. Macau is also party to two international conventions on salvage namely the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, 1910 and the more recent International Convention on Salvage 1989.

note that it adheres to the New York Convention²⁶ on enforcement of international arbitration awards; that is significant for international trade.

IV THE QUESTION OF APPLICABILITY OF THE CISG AND THE NEED TO EXAMINE THE ROLE OF THE UNIFORM LAW FOR MACAU SAR

As discussed above, although a whole array of international law governing public and private matters relating to trade that applies to Macau SAR, the application of CISG to Macau still remains as an evasive issue. Some of the important concerns and challenges arising in this regard should be identified and effectively addressed in order to facilitate international trade in goods in Macau SAR. Such a need is critical not only for the international trade in Macau but also to consolidate its role as a trade facilitator for the PRC. The question of applicability of the Convention on International Sale of Goods (CISG) to both Macau and Hong Kong Special Administrative Regions (SARs) has always been on tenterhooks²⁷. The issue has been regularly arising within and outside China. The uncertainty is attributed to the lack of a formal declaration extending the application of the CISG to the two SARs of Hong Kong and Macau by the People's Republic of China (PRC) upon its resumption of sovereignty. PRC being a signatory to CISG, albeit with some reservations, has been widely embracing CISG not only in cases involving foreign parties but also parties involving the SARs. Similarly, foreign jurisdictions like the USA have been upholding the application of CISG to the cases involving parties from the SARs. However, the practice is not always consistent in such cases as there are several instances of rejection of application of CISG both within and outside the PRC. Such divergence creates much of an uncertainty about the application of CISG to the two SARs. The resulting ambiguity has undermined the utility of CISG for commercial entities dealing with the SARs. This issue, which has been subject of enquiry by different studies, should be closely examined in investigating the relevance of a uniform law like CISG for Macau SAR specifically. The relevance of CISG for Macau SAR should be examined both in terms of facilitating international trade in Macau and enhancing its role as a facilitator of international trade for and with China. Any such exercise should take cognizance of the implications of extending the uniform law to Macau SAR upon the intra-regional trade between the two SARs and with other regional markets.

26 See Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

27 For a detailed study on major factors that give rise to the question of whether Macau and Hong Kong can be considered as contracting parties to CISG see Ulrich G Schroeter "The Status of Hong Kong and Macao Under the United Nations Convention on Contracts for the International Sale of Goods" (2004) 16(2) Pace International Law Review 308.

The need to systematically examine the role of CISG for Macau and its possible formal extension to Macau SAR arises due to several compelling reasons. Firstly, such a need arises due to the changing landscape of international trade in goods in Macau as demonstrated earlier. The analysis in section two above reveals that among the top six international markets for the trade in goods for Macau namely PRC, Hong Kong, France, USA, Japan and Germany, CISG is in force in five of them except Hong Kong. The fact that CISG is in force in most of the jurisdictions, which are Macau's major trading partners is prima facie evidence that calls for the need to study the advantages of extending CISG to Macau. Although, any consideration of extension of the CISG by the PRC is expected to take into account both the SARs, the fact that Hong Kong has been mainly influenced by the UK Sale of Goods Act 1979²⁸ and the UK is not a member of the CISG may not provide sufficient motivation for Hong Kong to seek the extension of CISG if consulted by the PRC on the matter. Therefore, it is necessary for any examination to take into consideration of such a possibility and seek to investigate how the legal environment governing the goods trade between Hong Kong and Macau could be enhanced.

Secondly, the need to examine the role of CISG and its extension to Macau arises particularly to enhance its role as a platform for facilitating trade between PRC and the Portuguese Speaking Countries (PSCs). Such an exercise is more pertinent in the specific context of Brazil, which is one of the major Portuguese speaking trading partners of PRC and a crucial member of the emerging BRICS cooperation. The recent Brazilian accession to the CISG in 2013 as one of the first Portuguese speaking countries to join the uniform law and the fact that that enters into force in Brazil from 1 April 2014 is an important development. This requires Macau to evaluate the advantage of adopting the CISG. The accession of Brazil to CISG risks a diminishing role for Macau as a facilitator of trade between the PRC and Brazil. As both these big trading nations are CISG members, individual traders from both markets will find the involvement of Macau in international sales transactions as an obstacle due to the fact that it is a non-CISG jurisdiction. This may diminish the possibility of using intermediaries or distributors in Macau, who may otherwise be found to be an attractive factor given the homogeneity in the legal tradition and language. Moreover, the recent Brazilian decision to join the CISG may prompt other Portuguese speaking jurisdictions to contemplate a similar move.

28 For a succinct examination of some specific issues relating to the international sales arising under the CISG, the English law and Hong Kong Sale of Goods Ordinance see Michael Bridge, "A Law for International Sales" (2007) 37 Hong Kong Law Journal 17-40.

PRC being a major trading market, which many of the Portuguese speaking countries would like to tap, the CISG membership of PRC provides a good incentive to explore the possibility of joining the regime as it provides an opportunity to bridge the diversity of domestic laws governing international sale contracts. As a facilitator of trade, Macau joining the CISG could act as a stimulant in seeking the uniformity of sales law between PRC and the Portuguese speaking countries. In this regard the Forum for Economic and Trade Cooperation between China and Portuguese-speaking Countries established in Macau SAR (the Macau Forum²⁹) should undertake such a study to examine the advantage of other Portuguese speaking countries joining the CISG. The example of PRC and Brazil being members of CISG should be studied in determining the advantages of CISG being adopted by other member states of the Macau Forum namely Angola, Cape Verde, Guinea Bissau, Mozambique, Portugal and East Timor. In this context, the specific issues arising with regard to individual Portuguese speaking countries will have to be addressed in order to examine whether the uniform law would enhance the unique role of Macau as a facilitator of trade.

Any study of the role of CISG in enhancing the trade relations between Macau SAR and another jurisdiction would warrant a close examination of the characteristics of relevant domestic laws. The identification of such characteristics should then lead to a comparative study not only between the domestic laws of the two jurisdictions but also the relevant contract laws of each jurisdiction and the CISG. The comparative study involving Macau and other jurisdictions should take stock of the practice and interpretations on the question of applicability of CISG in judicial and arbitral proceedings involving parties from the two SARs. For example, judicial interpretations³⁰ and arbitral decisions³¹ in other jurisdictions like

29 Macao has been regularly hosting the Ministerial Conference of the Macau Forum since its establishment since 2003. The First ministerial meeting of the Macau Forum was held in October 2003, where an Economic and Trade Cooperation Action Plan was signed at the ministerial level and an agreement to establish a permanent secretariat for the Forum in Macao was made. The Second Ministerial Meeting of the Macau Forum held in 2006 adopted and signed the Economic and Trade Cooperation Action Plan 2007-2009. In 2010, the third Ministerial Conference of the Macau Forum signed the Action Plan on Trade and Economic Cooperation 2010-2013. Recently, the Fourth Ministerial Conference of the Macau Forum was held in November 2013, which adopted a new Action Plan targeting a goal of achieving 160 billion US dollars in bilateral trade between China and Portuguese speaking countries by 2016. For an account of how the Macau Forum has positively impacted the bilateral trade between PRC and the Portuguese speaking countries see Government Information Bureau, "Sino-Portuguese Forum promotes trade and ties in past decade" 5th November 2013 available online at <http://portal.gov.mo/web/guest/info_detail?infoid=278029>.

30 For some relevant US decisions see *Innotex Precision Ltd v Horei Image Products Inc* 679 F Supp. 2d 1356 (ND Ga 2009) and *Electrocraft Arkansas Inc v Super Electric Motors Ltd* No 4:09cv00318 SWW, 2009 WL 5181854 (ED Ark 23 December 2009). For a related decision from

USA and PRC involving parties from Macau or Hong Kong reveals diverse interpretations as to the applicability of CISG. Such an exercise should also be followed by a study and comparison of the private international law of both jurisdictions, mainly dealing with contractual issues and governing law.

The study of the role of private international law is crucial in understanding how the same could potentially address some challenges relating to bilateral transactions that may arise between the relevant jurisdictions. For example, a scant examination of some recent judicial disputes in Hong Kong courts involving the questions of jurisdiction or governing law of Macau highlights some important challenges and limitations of using private international law tools to address the underlying questions³². Under such circumstances, the major difference in contract law principles in Macau and Hong Kong reinforces the need to find some common ground and how a uniform law could meet the needs of the commercial enterprises of both jurisdictions dealing with each other. The closer economic cooperation in the greater Pearl River delta region involving Hong Kong, Macau and Provinces in South China is also a viable platform to undertake such a study regarding the implications of the lack of uniform law governing sales transactions between the three jurisdictions and how the same could be addressed effectively. Such a study should also pave the way to identify whether adopting a uniform law or devising a specific bilateral or regional solution to address the identified challenges could be more effective.

V CONCLUSION

In the light of the various economic indicators and legal issues highlighted in this chapter it can be concluded that it is opportune to initiate a systematic study to examine the role of international law in enhancing the scope of international trade in general and trade in goods in particular. In this regard, the need for Macau SAR to diversify from service industry in general and gaming in particular is a key factor, which should be considered in enhancing the goods sector in Macau trade. Congenial factors like the projects establishing specific cross-border economic zones and the plans to jointly develop a Traditional Chinese Medicine Science and

the Australian court see *Hannaford v Australian Farmlink Pty Ltd, Australia* (24 October 2008) Federal Court, South Australia District.

31 For an arbitration proceeding dealing with the matter involving a parties from Macau SAR and PRC prior to the handover see *Natural rubber* case, 4 September 1996 CIETAC Arbitration proceeding, China, English translation available online at <http://cisgw3.law.pace.edu/cases/960904c1.html>.

32 See for example, See for example *MGM Grand Paradise Ltd v Chiu Tak Wah* [2012] HKCFI 1529, *Wynn Resorts (Macau) SA v Mong Henry* [2010] HKCFI 134, *Bank Of China, Macau Branch v Chan Yeuk Wai and Another* [2004] HKCFI 1168.

Technology Industrial Park should also further increase the role of the goods sector in Macau in the future. Studies and initiatives to improve the legal environment governing international trade in goods in Macau should supplement such ambitious projects and examining the role of CISG is critical in this regard. Moreover, Macau has a tremendous potential and advantage under the Closer Economic Partnership Agreement (CEPA), a free trade agreement concluded between Macau and PRC, to tap into the goods sector trade with PRC. However, the same remains underutilized due the shrinking nature of the Macau goods exports noticed earlier and its increased focus on the service sector. Any initiative to enhance goods trade to take advantage of CEPA would also benefit from the certainty about the application of CISG for transactions involving the parties from PRC and Macau, which is at present cluttered by diverse judicial or arbitral interpretations. Therefore, the need for a comprehensive examination of the relevance of the uniform law for Macau to foster its future economic growth and its role as a trade facilitator is warranted. As CISG is already in force in PRC, it is a question of formally extending its application to Macau SAR, which as the Basic Law contemplates will be carried out based on the circumstances and the needs of Macau SAR. There is compelling evidence that shows the need for a study to determine whether the circumstances and the need for extending CISG to Macau SAR are now present.