Chapter 1 Introduction

Learning objectives

1. Learn the course nature and content.
2. Be familiar with the relevant laws and practices applicable to international trade.
3. Master the basic procedures of import and export business.

Case & Analysis

Case: A British businessman (A) makes an offer to a federal Germany businessman (B) on May 3^{rd} to sell a certain number of goods. B is in the receipt of this offer on May 4^{th}, and makes a complete answer to accept the offer on the morning of May 4^{th}. After A sends the offer, he finds the commodity prices upward, hence he cabled B to withdraw the offer in the afternoon of May 5^{th}. It is in the morning of May 6^{th} that A receives the acceptance from B. Question: (1) According to the British law, is it legal for A to withdraw the offer? (2) If the case is applied to the CISG, whether both sides exist contract relationship?

Analysis: (1) According to the British law, it is illegal for businessman A to withdraw the offer. According to the British law: an acceptance once sent out, it is effective immediately, and in this case B makes a promise on the morning of May 4^{th}, the contract between them has come into effect.

(2) According to the CISG, both parties have the contract relationship. According to the CISG, an offer can be withdrawn before the offeree advises the commitment. However, in this case, B has made a commitment before A makes the withdrawal advice. So A cannot withdraw. The commitment made by B has come into effect when it reaches A in the afternoon of May 8^{th}. The contract is formed.

Section 1 Definition and Role of International Trade

International trade is the worldwide exchange of goods and services among nations. International trade is just like any other trade except that it crosses international boundary lines. To be more exact, it is the exchange of goods and services produced in one country for goods and services produced in another. Why is international trade necessary? Why can't people be self-sufficient, capable of living exclusively on the goods and services produced within their countries? There are several reasons.

The distribution of natural resources in the world is uneven. Some nations of the world have natural deposit in excess of their own requirement while other nations possess none. For example, the Middle East countries have vast oil deposit but lack many minerals such as coal, nickel, copper, aluminum, etc. If a country has abundance of natural resources, it is common to find these resources being exported.

Different countries have their own different land, climate and general conditions for agriculture, forestry, husbandry, etc. Some countries can produce more relevant products than their own needs while other nations are unable to produce sufficient products to meet their large demand. For example, Colombia and Brazil have the year-round weather conditions to grow coffee beans, while the United States, with the exception of Hawaii, does not. As a result, the United States must import coffee.

Different level of manufacturing and technology, with the development of manufacturing and technology, arose another incentive in producing certain industrial products which are better received by the customer in other nations. For instance, Japanese automobiles are more saleable than those made in some other Asian countries.

International trade involves the use of two or more currencies. Overall, it produces a more efficient employment of the productive forces of the world. Hence it embraces two basic elements. First, it is carried out between two or more nations. Thus when trade is executed beyond national frontiers, it is invariably subject to political, social, economic and environmental policies introduced by nations from time to time. To a large extent, such policies have either somewhat encouraged or hampered the free flow of merchandise in international trade. The second factor is the use of different currencies with their inherent exchange rate differentials: the terms of trade, or alternatively the balance of trade. This produces a favorable result in some countries but is unfavorable to others.

International trade increases competition and prevents the monopolistic control of the home market by local exporters. It also provides a stimulus to economic growth, developing technology and raising living standards. Overall, it provides wealth to the economy and extends opportunities to exchange ideas and develops the infrastructure of a country or region and its resources. Trade develops beneficial links among countries and encourages tourism and education. This brings both political and economic stability to a country or region.

There are more benefits for enterprises in the international trade, especially for export business.

(1) There is a potential for greatly increased company turnover.

(2) The product or service offered is more competitive. It reflects that international market needs and conforms to a wider legal environment. So the company becomes more competitive in all areas of the business: product specification, management skill, and value added benefit transmitted to the buyer in both price and non-price areas—the latter featuring servicing warranty.

(3) Economies of scale are achieved through a larger order book and better utilization of company resource, especially in the areas of production, design, administration and procurement.

(4) Companies become more integrated with the market they serve. On one hand, it can spread the risk and opportunities, on the other hand it can increase the use of high technology, which would not obtain when serving only the domestic market, an environment which may be shielded through high import tariffs imposed to protect local manufacturers.

Section 2 Differences between International Trade and Domestic Trade

The fundamental characteristic that makes international trade different from domestic ones is that international trade involves activities that take place across national borders. Thus when trade is executed beyond national frontiers, it is invariably subject to the political, social, economic and environmental policies of nations. Such policies can either encourage or hampere the free flow of merchandise in international trade. Special problems that are not normally experienced when trading at home may arise in international trade. In particular:

(1) Unlike domestic transactions in which only domestic currency is needed, international transactions might involve foreign currencies. As exchange rate fluctuations can be very significant, there will be many problems and risks for international trade. A wise trader should have a good prediction of the fluctuation of exchange rate as well as a sound interpretation of its relation to currencies used for pricing and settlement.

(2) International trade brings together people of different languages and cultures. So a

qualified trader must take into consideration different language habits, meanings and cultural differences so as to avoid unnecessary disputes when trading with other nations.

(3) In international trade, deals might have to be transacted under foreign laws, customs and regulations or subject to international rules. As these rules and regulations are largely different from country to country and international rules adopted by some countries may not be accepted by other countries. Before a specific transaction, it is wise for businessmen to be aware of these laws, customs or rules with a view to facilitating trading.

(4) Risk levels might be higher in foreign market than in domestic market. The risks include political risks of the imposition of restrictions on imports, etc.; commercial risks of market failure, products not appealing to foreign customer, etc. ; financial risks of adverse movements in exchange rate, high rates of inflation reducing the value of a company's working capital; and transportation risks. So a good trader needs to be sensitive to various risks in international trade and learn ways to minimize the negative impacts on his business.

(5) Compared to domestic trade, it is more difficult for dealers in international trade to get the necessary information of a particular firm in a foreign country. Control and communication systems are normally more complex for foreign than for domestic operations. It is also far more difficult to observe and monitor trends and activities in foreign countries. Therefore, managers engaged in international trade need a broader range of management skills than those involved only in domestic trade.

Section 3 Laws and Practices Applicable to International Trade

To sign a sales contract, we need to base on the international trade practices, international treaties and related legislation. Therefore, to understand and be familiar with the relevant conventions, treaties and laws are significantly important for people dealing with international business.

As for the application of the law, China Contact Law No. 126 stipulates that parties to a contract involving foreign interests can choose the applicable law to process the contract dispute except as otherwise stipulated by law. If parties to a contract involving foreign interests have not made such a choice, the most connected country laws shall apply to the contract.

Court of justice or arbitration agencies usually makes ruling according to the customs when disputes arise during the contract execution. Thus the customs are influential to some extent. Especially lately, some international conventions and laws endow the customs legality. China's laws indicate what the law fails to cover is subject to international trade customs.

United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG] Article 9: (1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. (2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Therefore, it is of great significance to get familiar with the customs and carry out trade practices.

International trade customs are universally recognized customary ways of doing business and explanation evolved in the long process of trade development. They have been compiled by relative international organizations into rules and regulations which are acquainted, recognized and adopted by many trading organizations in most countries. The most influential and most important customs are Uniform Custom and Practice for Documentary Credits, 2007 Revision, I. C. C. Publication No. 600 (UCP600), and International Rules for the Interpretation of Trade Terms (INCOTERMS® 2010). The nature of international trade customs as follows:

(1) International trade customs are not compulsory since they are not legislations or laws for all countries, neither legislations nor laws of a certain country.

(2) When both parties cite one international custom, it becomes legally valid and both parties are subject to it.

(3) Even if the contract does not indicate which custom the contract is subject to, the custom still has binding force.

(4) If the contract clauses conflict with customs, the contract to be followed is as a basic principle.

(5) Both parties could make out some clause different from customs when signing a contract on the principle of contract first and contract freedom.

Section 4 Procedures for International Trade

Among the various forms of international trade, export trade and import trade are the two most frequently referred trade forms in the world. They are actually two sides of the same transaction. Generally speaking, from the beginning to the end of a transaction, the whole operation undergoes five stages, namely the preparation of a transaction, the negotiation of the contract, contract signing, the performance of the contract and finally the settlement of disputes (if any). Most of the export transactions in our country are under CIF term with payment by

L/C. For import transactions, they are usually under FOB term with payment by L/C.

An export/import transaction is very complicated and it may take quite a long time to complete it. Its operation covers many links that are a constitute part of the transaction. No matter what kind of commodity you deal with, generally, the whole operation usually undergoes four steps: preparation for exporting/importing, business negotiation, conclusion of a contract, and implementation of contract. Each step covers some specific links.

Briefly, the import and export procedure are indicated in the following two figures respectively (See Figure 1-1and 1-2). For more details, Please see Chapter 12 Performance of Import and Export Contract.

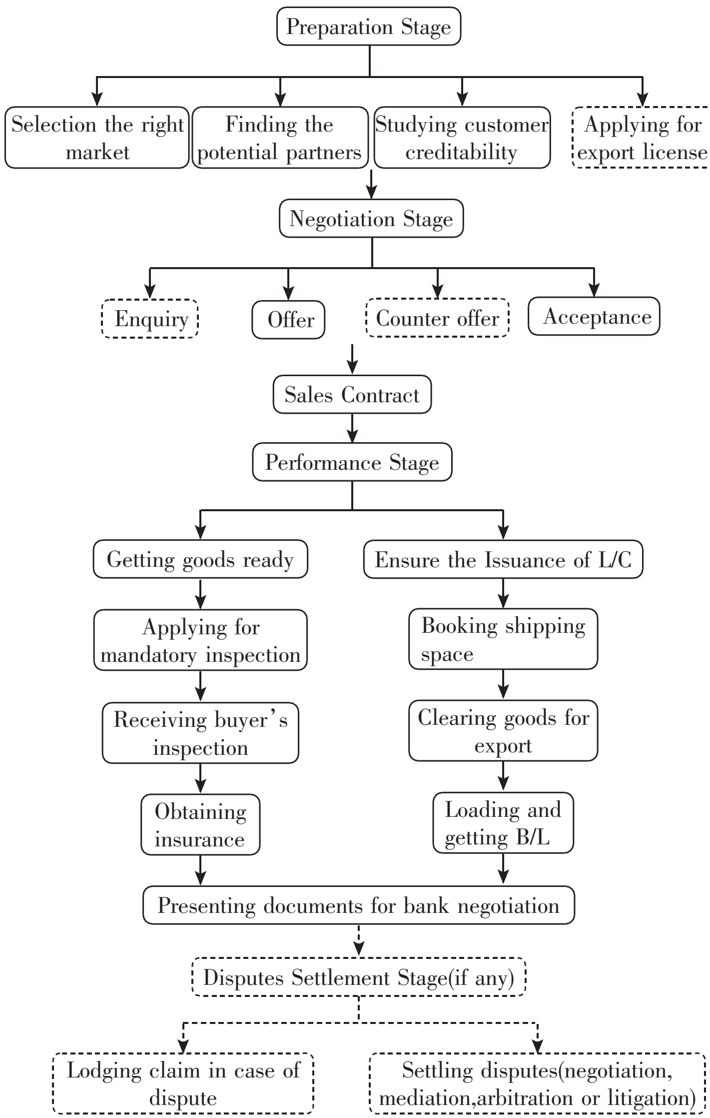

Figure 1-1 Flowchart of Export Procedure

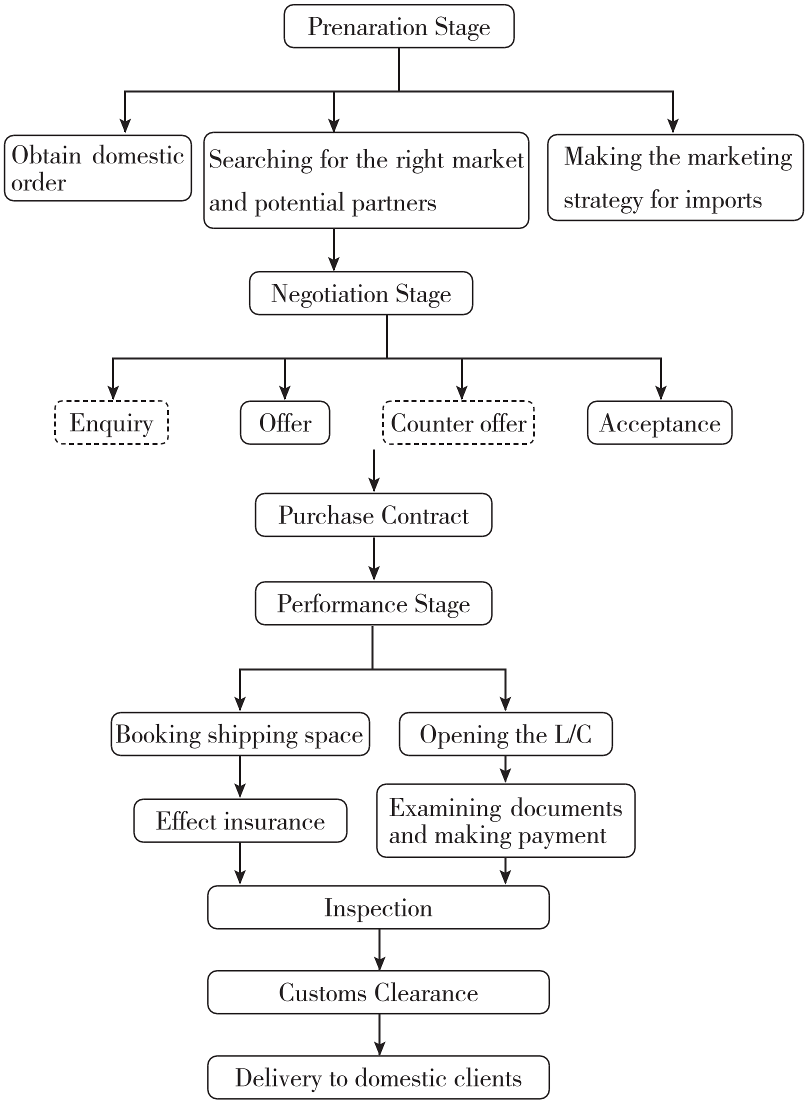

Figure 1-2 Flowchart of Import Procedure

Summary

International trade procedure usually consists of the following steps: the preparation of a transaction, the negotiation of the contract, signing the contract, the performance of the contract and the settlement of disputes if applicable. "International Trade Practice" is a course with strong practicality. Besides introducing international trade theories, practices, and laws, it also emphasizes on practical skills and application. The objective of this course is to enable students to posses the practical skills for international trading business operation.

Key terms

trade terms   trade customs   trade practice   import trade   export trade
sales contract   export procedure   import procedure

Exercises

Ⅰ. Questions for comprehension

1. What is international trade?
2. Explain the difference between international trade and domestic trade.
3. Why do nations conduct trades with each other?
4. What are the major benefits of international trade?
5. What are the procedures of importing and exporting?
6. What are the International Trade Customs?

Ⅱ. Fill in the following blanks with necessary information.

1. It is common to find these resources being exported if a country has natural deposit ________ its own requirement.

2. The parties to an international sales contract can choose ________ to process the contract dispute except as otherwise stipulated by law. If parties to a contract involving foreign interests have not made such a choice, ________ laws shall be applied to the contract.

3. The most influential and most important customs on L/C payment and trade terms are ________ and ________ respectively.

4. International trade is different from domestic trade in that it is largely influenced by ________, ________, ________ and ________ policies introduced by nations from time to time.

5. Apart from resources reasons, ________ and ________ are also reasons for a nation to trade with other nations in the world.

6. Despite the difference between export trade and import trade, international trade procedures always fall into four main parts: ________, ________, ________ and ________.