新基点高等院校商务英语专业本科系列教材·商务知识子系列

国际贸易实务(英文版)(第六版)辅导用书

International Trade Practice (Sixth Edition) Reference Book

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Chapter One

General Introduction

1. Background and Suggestions for Teaching and Learning

1.1 背景知识

国际贸易(Foreign Trade)系指一个国家或地区同别的国家或地区进行商品和劳务交换的活动。资本主义生产方式产生之前,贸易多限于国家范围内发生;资本主义生产方式产生后,特别是产业革命以后,由于生产力迅速提高,商品生产规模不断扩大,国际贸易迅速发展,并开始具有世界规模。从 17 世纪到 19 世纪,资本主义国家的对外贸易额不断上升,其中英国在国际贸易中长期处于垄断地位。当时参与国际贸易的商品主要是一般消费品、工业原料和机器设备。19 世纪末进入帝国主义时期后,形成了统一的无所不包的世界经济体系和世界市场。

此后,第一次世界大战的冲击和 1929~1933 年世界经济危机使资本主义世界经济遭到很大破坏,世界贸易额锐减并停滞不前。第二次世界大战后,国际贸易进一步扩大和发展,美国成为国际贸易中的头号大国。20 世纪 50 年代以后,随着生产的社会化、国际化程度的不断提高,特别是新科技革命带来的生产力的迅速发展,国际贸易空前活跃并带有许多新的特点,贸易中的制成品已超过初级产品而占据主导地位,新产品不断涌现,交易方式日趋灵活多样。现代的国际贸易的商品无所不包,服务和技术等无形商品的贸易发展更是迅速。本书主要还是针对有形贸易的实务编著的。

国际贸易实务是指完成一笔进口或出口交易所进行的一系列业务活动。一笔交易从开始到结束,大体上可以分为四个阶段:① 交易前的准备工作;② 交易的磋商和合同的订立;③ 合同的履行;和④ 贸易纠纷的处理。值得注意的是由于社会制度的不同,各国贸易实务四个阶段中的具体内容不尽相同,我国的国际贸易实务也有其独特的内容和做

法,本教材中的外贸实务就是根据我国的外贸的特点而编写的。

我国进出口业务中每个阶段的主要工作如下:

第一阶段是进出口前的准备工作。主要有:编制进出口计划,报经有关部门批准,按照一定的渠道组织技术交流,调查国外市场情况,选择交易对象;这种准备工作是多方面的、复杂的,但也是很重要的,准备工作是否成熟,直接关系到每笔交易的结果。

第二阶段为交易磋商和合同的订立。交易磋商就是通过函电或口头谈判磋商每笔进出口业务的具体事宜。如某矿区拟购买大型轮式装载机 3 台,在技术交流的基础上,首先通过中国技术进出口总公司向美国卡特彼勒公司、马拉松公司询价,在业务上叫作"询盘"。对方收到电传后,根据性能、规格要求,寄来正式报价资料,业务上叫作"发盘"。我方接到报价之后,对有些条款不能接受,尤其是价格偏高,可邀请外商到北京等地洽谈。我方对报价的修改意见或提出的还价,业务上叫作"还盘"。这种讨价还价可能往返多次,双方谈妥了条件和价格,即为"接受"。根据《联合国国际货物销售合同公约》(CISG)的规定,"接受"就意味着合同在法律意义上已经成立。当通过磋商达成交易后,由于谈判或函电内容比较分散,甚至是口头的东西,不便履行,而且一旦发生争执也不好处理,所以需将协议内容以书面的形式固定下来,称为"买卖合同"。买卖合同的主要内容一般包括:商品的品名、品质规格、数量、包装、价格、金额、交货方式、交货期、保险、支付、检验、索赔、仲裁等条款,以及其他权利和义务。

第三阶段是履行合同。各进出口公司所签的合同多以信用证方式来支付货款。以出口为例:国外客户根据合同规定的时间,通过国外银行开给我方一个付款证书,即"信用证",保证只要我方按证中规定的条件提供完整、正确的单据,在信用证有效期内向银行结汇,银行保证付款。我方收到信用证,经审查无误后,便办理装运工作。首先要备货,然后租船订舱、投保(在 CIF、CIP 条件下)、报验、报关,最后装船出运。货物装船后,通常要向买方发一份电报,通知买方货物已装于某船,叫作"装船通知"。然后,将各种装运单据提单、发票、保险单、检验证书等送交当地议付银行。银行审单无误后,寄送开证行或开证行指定的银行收款。付款银行再次审查无误后付外汇给议付银行,按当时规定的外汇牌价折成人民币转记在出口公司账户上,这叫作"结汇"。一般来说,到此一笔交易才算完结。但是,有的交易结汇后还可能发生争议,这时还要进入业务的第四个阶段。

第四阶段是贸易纠纷的处理。当进出口的一方或双方未能部分或全部履行合同规定的责任与义务,则会引起纠纷,叫作"争议"。受损的一方在争议发生后,向违约方提出赔偿的要求,称为"索赔";违约的一方对受损方所提出的赔偿要求的受理和处理,业务上叫作"理赔"。

本章的内容重点就是讲解进出口实务四个阶段的具体内容和做法,教师可以结合教科书第一章图 1.1 的流程图进行讲解。此外,如果侧重各流程环节所牵涉的贸易单据,也可结合第八章的内容来讲解。

1.2 教学目标及建议

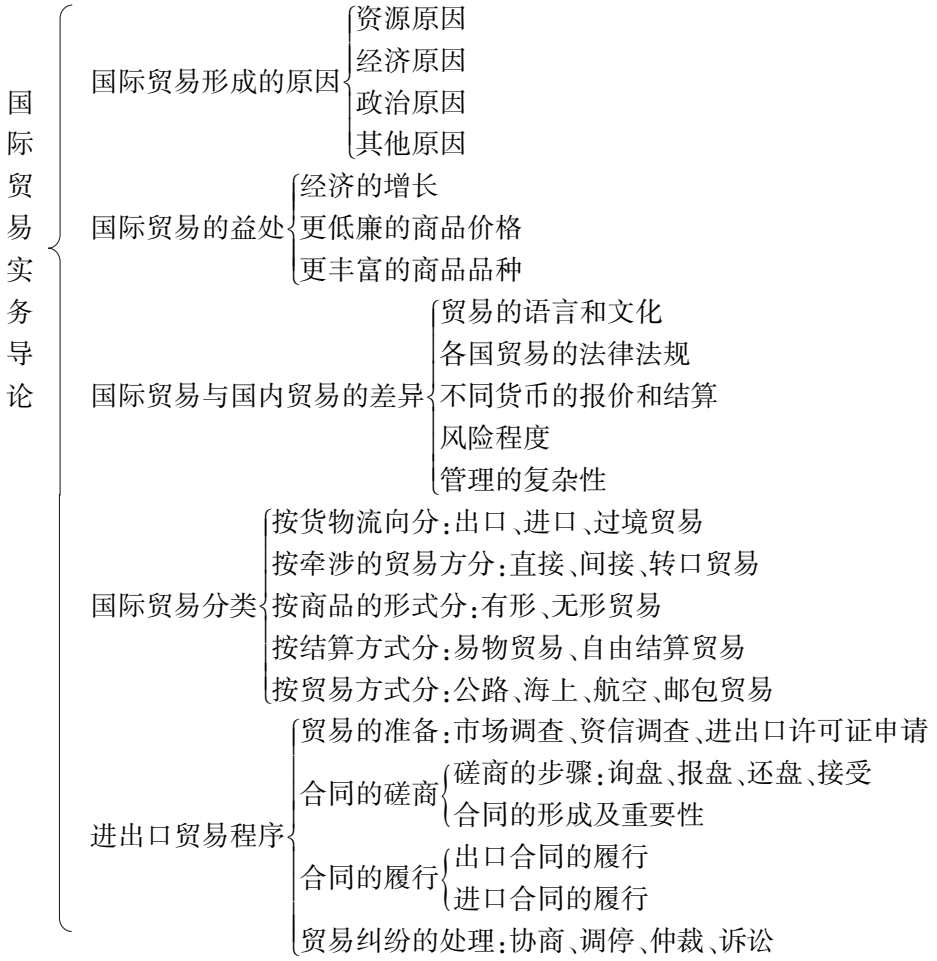
完成本章的教学内容后,学生应掌握以下的内容:

- 国际贸易的定义及其产生的历史
- 各国参与国际贸易的主要原因

- 国际贸易给各国带来的益处
- 国际贸易和国内贸易的异同点
- 国际贸易的分类基础及各种贸易的定义和意义
- 进出口贸易的流程及合同的重要性

本章是引言,主要是基本概念的介绍,本章节的主要内容是对合同重要性以及国际贸易流程,特别是出口贸易流程的介绍,建议用 3~4 个学时进行讲解。

1.3 知识结构图



2. Learning Points

2.1 过境贸易与转口贸易的不同

过境贸易(transit trade)指别国出口货物通过本国国境,未经加工改制,在基本保持原状的条件下运往另一国的贸易活动。过境贸易有两种类型,一种称为直接过境贸易,即外

国货物到达本国口岸后,在海关直接监管下,通过国内运输线从其他口岸离境,有时直接过境甚至不需卸货和转换运输工具,承办过境的国家一般要收取一定的费用。另一种称为间接过境贸易,即指外国货物到达本国口岸后先存入海关保税仓库,未经加工改制,又从海关保税仓库提出,运出国境的活动。

转口贸易(entrepôt trade)又称中转贸易(intermediary trade)或再输出贸易(re-export trade),是指国际贸易中进出口货物的买卖不是在生产国与消费国之间直接进行,而是通过第三国转手进行的贸易。货物消费国和货物生产国通过第三国进行的贸易活动,对于第三国而言就是转口贸易。商品的生产国把商品卖给第三国(或地区)的商人,然后第三国(或地区)的商人再把商品卖给真正的商品消费国。这种贸易对商品生产国和消费国来说是间接贸易(indirect trade),对第三国(或地区)来说,则是转口贸易(entrepôt trade)。转口贸易的发生,主要是有些国家(或地区)由于地理的、历史的、政治的或经济的因素,其所处的位置适合于作为货物的销售中心。这些国家(或地区)输入大量货物,除了部分供本国或本地区消费外,又再出口到邻近国家和地区。如新加坡、香港、伦敦、鹿特丹等,都是国际著名的中转地,拥有数量很大的转口贸易。它们通过转口贸易除了可以得到可观的转口利润和仓储、运输、装卸、税收等收入外,同时也推动了当地金融、交通、电讯等行业的发展。

转口贸易和过境贸易的区别在于转口贸易中商品的所有权先从生产国出口者那里转到第三国(或地区)商人手中,再转到最终消费该商品的进口国商人手中。而在过境贸易中,商品所有权无须向第三国商人转移。

2.2 资信调查的重要性

在国际贸易中买卖双方发生索赔纠纷,履约遭受阻碍,收回货款困难,大多都是与不了解贸易对方的资信情况有直接或间接的关系,因此,进行必要的资信调查对贸易的顺利进行、减少贸易方的风险和损失非常重要。通常可以通过往来银行、国内外的咨询机构和国内外的商会组织等途径对客户进行资信调查,调查的内容可包括:客户企业的组织情况、道德品格、贸易经验、企业资金情况和信誉度、企业经营范围及经营能力等。只要调查的客户资料不用于商业牟利的用途,通常银行、商会等组织是乐意提供客户的资信情况的。

2.3 合同的重要性

买卖双方在合同条款磋商的过程中,一方对另一方的接受函抵达对方时,买卖的合同即宣告成立,对双方都具有法律的约束力,而此后的合同条款的拟定和合同的会签只是形式的问题,不会出现因为没有会签而合同不成立的问题。合同的形式多种多样,口头的合同与书面合同具有同等的法律效益,如果在合同履行的过程中,买卖双方对合同条款有所变动,只要这种变动得到买卖双方的同意,即使是口头的改动,也认为是有效的。但这不等于说书面的、正式的合同没有必要,事实上,合同是规定买卖双方的权利和义务的唯一证明文件,是买卖双方履行合同的依据,也是将来处理贸易纠纷的依据。因此,鉴于合同的重要性,在实际贸易实务操作时,书面的、正式的合同总是合同存在的主要形式。

教科书第一章示例 1.1 是销售确认书样书,可以在第三章价格磋商的模拟操练后,让学生就谈判的结果填写此确认书。

2.4 信用证下卖方备货

在以信用证为结算方式的交易中,卖方在备货待运之前一定要确保买方已申请开立了以卖方为受益人的信用证,如尚未开立,卖方要催促买方及时开证。收到信用证后,卖方要认真仔细地核对信用证的内容是否与买卖合同的内容相符,如若发现有任何不符,卖方应通知买方,并敦促买方及时修改信用证中的不符点。只有当卖方收到了与合同内容完全一致的信用证才能备货待运。如果卖方在没有收到买方信用证的情况下,或在信用证修改过程中贸然发货,很可能会由于没有信用证,或单据与信用证不符而收不到货款。

2.5 商检

货物的商检分为很多种,这在第九章会专门讲到。但就各自承担的费用而言,如果卖方同时又是生产商,通常他必须负责产品出厂前的品质检验的费用;如果他只是出口商,他从供应商或厂家处购买的货品的价格中就已经包含了产品出厂前的品质检验的这笔费用。换言之,产品出厂前的检验费通常由卖方负责。根据我国商检法的规定,列入《强制性国家标准目录》的商品,都必须由国内检验机构进行检验。此外,在买卖合同中订立的由卖方承担的商品检验也须由卖方向当地的检验机构申请进行检验,检验合格后,签发相关的检验证书和"出口商品检验换证凭单"。当商品的装运条件确定后,卖方凭"换证凭单"向口岸商检机构申请查验放行。这部分强制性的检验费用由卖方自行负责。

买方如果对货物提出强制性检验之外的额外的检验要求,则卖方应该在要求合理的情况下协助买方进行检验,但买方必须自行负担这部分的检验费。在外贸实务中,为了检验的公正起见,买方通常会派他的代理在卖方检验的过程中进行监督。

2.6 出口报关

卖方根据出口合同的规定,按时、按质、按量备齐出口货物后,即应当向运输公司办理租船订舱手续,准备向海关办理报关手续,或委托专业(代理)报关公司办理报关手续。出口货物的报关时限为装货的 24 小时以前。卖方应在规定的时间内备齐报关所需的文件申请报关,等待海关查验货物。根据《海关法》的有关规定,进出口的货物除国家另有规定外,均应征收关税。关税由海关按进出口税则征收。需要征税费的货物,自接受申报 1 日内开出税单,并于缴核税单 2 小时内办结通关手续。申报人如数缴纳应缴税款和有关税费后,海关在出口装货单上盖"海关放行"章,出口货物的发货人凭此装船起运出境。

2.7 装货事宜

托运人(通常是卖方)在办理完海关手续之后,就可以要求承运人装船了。在装船过程中,通常托运人委托的货运代理会派人在现场监装,随时掌握装船进度并处理临时发生的问题。装货完毕,船方大副要签署收货单(Mate's Receipt),交与托运人。如发现某批货物有缺陷或包装不良,即在收货单上批注,并由大副签署,以确定船货双方的责任。但

作为托运人,应尽量争取不在收货单上批注以取得清洁提单。托运人可凭收货单向船公司或其代理换取已装船提单(On Board Bill of Lading)。

装船完毕,托运人要向收货人(通常是买方)发出装船通知(Shipping Advice),装船通知也叫装运通知,主要指的是出口商在货物装船后发给进口方的包括货物详细装运情况的通知,其目的在于让进口商做好筹措资金、付款和接货的准备,如成交条件为 FOB/FCA、CFR/CPT 等出口商还需要向进口国保险公司发出该通知以便进口商办理货物保险手续。

3. Solutions to Exercises

I. Questions for Comprehension.

1. What is international trade?

答: International trade is also known as world trade, foreign trade, overseas trade, etc. It refers to the process of fair and deliberate exchange of goods or services between two or more countries, involving the use of two or more currencies. Besides, international trade concerns trade operations of both import and export and includes the purchase and sale of both visible and invisible goods.

2. What are the differences between international trade and domestic trade?

答: International trade differs from domestic trade in that it involves activities that take place across national borders, and therefore invariably subject to the political, social, cultural economic and environmental factors or policies of nations. In particular, international trade is more subject to

- language habits, meaning and cultural differences,
- foreign laws, customs and regulations or international rule,
- exchange rate fluctuations,
- higher level of political, financial, and transportation risks,
- difficulty in getting necessary information of a particular firm in a foreign country,
- complexity in control and communication systems, and
- difficulty in monitoring trends and activities in foreign countries, etc.

3. Why do nations conduct international trade with one another?

答: A nation conducts international trade because:

- it has the products and resources that exceed its domestic demand;
- it wants to get more economic benefits in a larger international market than what can be gained in the domestic market;
- it wants to win political support; or
- it needs to satisfy different tastes, preferences and consumption patterns among its people.

4. What are the major benefits resulting from doing international trade?

答：By trading with other nations, a nation is able to

- create more job opportunities and gain more market shares, which helps develop its economy and raise the living standard of its people;
- buy certain goods or services of the same quality or higher quality at lower prices, which enables the consumers to enjoy goods at much lower price; and
- provide a wider variety of products for its consumers and thus help improve the living standards of its people.

5. What are the procedures for both import and export trade?

答：Generally speaking, from the beginning to the end of an import or export transaction, the whole operation undergoes four stages, namely the preparation of a transaction, the negotiation of a contract, the performance of the contract and finally the settlement of disputes (if any).

Specifically, the procedures of international trade concern only the performance of the contract. In this sense, export transactions under CIF with payment on L/C may go through the following steps: examining L/C; booking shipping space; getting goods ready; applying for mandatory inspection; receiving importer's inspection; clearing goods for export; getting goods loaded; obtaining insurance and presenting documents for bank negotiation.

On the other hand, the procedure for import transactions under FOB term with payment on L/C is: opening L/C; booking shipping space; inspecting and supervising at the port of shipment; obtaining insurance; examining documents and making payment; clearing goods for import; taking delivery and inspecting.

6. How many forms are adopted in the process of negotiation?

答：Business negotiations can be conducted in two forms: in words, i.e. face-to-face negotiation or negotiation through telephone, and in writing, i.e. business correspondence which includes letters, faxes, e-mails, telexes, etc. Whatever is chosen for the negotiation of a contract, four main steps are generally followed before a contract is concluded: enquiry, offer, counter-offer and acceptance.

II. Fill in the following blanks with necessary information.

1. According to the direction of cargo flow, international trade can be classified into __export trade__, __import trade__ and __transit trade__.

2. There are three parties involved in indirect trade, namely __the exporter__, __the importer__ and __the intermediate party__.

3. Visible trade is also called __tangible goods trade__ while another name for invisible trade is __intangible goods trade__.

4. Apart from resource reasons, __economic reasons__ and __political reasons__ are also reasons for a nation to trade with other nations in the world.

5. Despite the differences between exporting trade and importing trade, international

trade procedures always fall into three main parts: __the preparation of a transaction__, __the negotiation of the contract__ and __the implementation of the contract__.

6. Negotiations in international trade are conducted in two forms: __face-to-face__ negotiation and __correspondence__ negotiation.

7. If a transaction is concluded on CIF term with L/C as the payment term, with a view to safe collection of payment, the exporter should urge the importer to __expedite the opening of L/C__. Upon receipt of the relevant L/C, the exporter must __check the L/C__ against the sales contract carefully to ensure all terms and conditions in L/C are in strict conformity with those in the sales contract. If any discrepancies are found, the exporter should urge the importer to __amend the L/C__ as quickly as possible.

8. The exporter should not __ship the goods__ without __getting the L/C__ which is strictly in line with __the sales contract__. Otherwise, he may render the risk of __losing the goods__ without __getting the payment__.

9. One of the possible consequences resulted from the exporter's failure in presenting to the negotiating bank the documents needed is that __the exporter will be exposed to the risk of being refused of the proceeds payment__.

10. The goods are allowed to be loaded for shipment __after__ they are cleared for export.

Chapter Two

International Trade Terms

1. Background and Suggestions for Teaching and Learning

1.1 相关背景知识

国际贸易的每笔交易都必然涉及商品价格的确定。在买卖双方磋商价格的时候,要确定的不仅仅是一个金额,在此金额条件下双方所承担的义务、风险及费用的分摊也必须明确。这就使得在贸易销售合同中引入贸易术语的必要性非常明显。贸易术语的使用主要是为了明确买卖双方在交接货物过程中的相关义务、风险和费用的划分。使用不同的贸易术语,交易双方所需承担的也不尽相同。而不同程度的分担最终都要在价格上体现出来。

贸易术语的使用有很长的历史,各国在不同的时期对术语的理解不尽相同。这就造成了各国贸易商在沟通过程中出现误解的可能性。为统一认识,国际上出现了一些有关国际贸易术语的解释的文件。主要的包括三个:《1932 年华沙-牛津规则》(*Warsaw-Oxford Rules* 1932)、《美国对外贸易定义 1990 年修订本》(*Revised American Foreign Trade Definitions* 1990)和《2020 年国际贸易术语解释通则》(*International Rules for the Interpretation of Trade Terms* 2020/*Incoterms* 2020)。由国际商会制订的《国际贸易术语解释通则》是其中应用最广、影响最大的一个。它在不同的时期进行了补充和修订。现行的文本 Incoterms 2020 自 2016 年起开始修改,在 2019 年 9 月 10 日正式向全球发布。该规则于 2020 年 1 月 1 日开始生效。它在 2010 年版本的内容上进行了一些改动,这些改动包括:一是在 FCA 术语下增加了关于已装船提单的选项。如果货物以 FCA 术语成交并经由海运方式运输,买卖双方(尤其是卖方)可能需要已装船提单。但是在该术语下的交货在货物装船之前已经完成,卖方能否从承运人处获取已装船提单是无法确定的。新版规则提出,买方和卖方可以约定,买方将指示其承运人在货物

装船后向卖方签发已装船提单,然后卖方有义务通过银行向买方提交该提单。二是Incoterms 2020 规则的条款进行了新的排序,费用显示在每条规则的 A9/B9 条款中,并罗列得更为详细。三是对 CIP 术语下卖方必须取得的保险险别进行了调整,由 2010 版的"至少符合《协会货物保险条款》(Institute Cargo Clauses) 条款(C)或类似的最低险别的条款"调高为"符合《协会货物保险条款》条款(A)的保险险别。四是在 FCA、DAP、DPU、DDP 术语下允许负责安排运输的一方除了雇佣第三方承运人之外,也可以使用自己的运输工具来收取货物并运往目的地。五是以 DPU 术语取代了 DAT 术语,并在顺序上将其排在 DAP 术语之后。除了以上的改动,Incoterms 2020 还在运输义务和费用中加入了与安全有关的要求,并修改了对 Incoterms 规则的解释风格,以便用户在特定交易中更准确、高效地选择合适的术语。

需要强调的一点是,尽管贸易术语的应用非常广泛,但是它们毕竟只是国际惯例,是在长期的国际交往中经过反复实践、反复使用而逐步形成的习惯性规范。这种规范具有普遍性,具有行为规则的性质,但不存在强制性,与法律规定还是不一样的。

1.2 教学目标及建议

在完成本章节的学习之后,学习者应达到以下目标:

- 理解使用于国际贸易中的各贸易术语
- 了解对各贸易术语起规范作用的各套主要规则
- 能对《国际贸易术语解释通则 2020》所包含的 11 个术语做出简单的解释
- 能对比学习 FCA、FOB、CFR 和 CIF 术语的同异
- 认识贸易术语在应用中的一些要点
- 以及列举出选择使用术语时的一些决定性因素

这一章节围绕《国际贸易术语解释通则 2020》的 11 个术语进行介绍,内容比较繁杂,建议安排 6~8 个课时进行讲解。

1.3 知识结构图

- 国际贸易术语
  - 贸易术语解释规则
    - 1932 年华沙牛津规则
    - 美国对外贸易定义 1990 年修订本
    - 国际贸易术语解释通则 2020
  - 国际贸易术语解释通则 2020
    - 管辖范围:责任、费用和风险
    - 术语分类
    - 各术语基本介绍
  - 术语应用要点
    - 清关
    - 品质确认
    - 装船通知
    - 详细的交货地点
    - 装运合同术语与到货合同术语
    - 象征性交货与实质性交货
    - 电子信息的有效性
  - 选择术语的决定因素

2. Learning Points

2.1 使用图表掌握术语

《国际贸易术语解释通则 2020》对贸易买卖双方在每个术语下所应承担的义务、风险以及费用进行了详尽的描述。但从初次接触的角度来看,11 个术语各有不同,想全部记住比较困难。这里建议通过使用教科书图 2.1 和表格 2.1 来帮助掌握各术语下关键的几个问题。

在使用本章图表前要明确几点前提。首先,图 2.1 是从卖方的角度来探讨有关问题的。也即是说, 图 2.1 表示的是在各贸易术语条件下卖方的风险、费用及义务达到什么程度。其次是关于图例的理解。黑色长条是用来表示卖方所承担的风险;透明长条是表示卖方所负责的手续和费用;条纹长条是表示卖方所负责的手续和费用,并特别包括购买保险的责任和费用。R 代表在此处风险的承担由卖方向买方转移。在图的底部标注了货物运输过程中可能经历的一些关键时/地点。

在使用图 2.1 的时候,学习者应该从左往右,先上后下来了解各术语的内容。以 FOB 术语为例,先从左往右看代表风险的黑色长条,黑条停止的位置再往下看,有一条虚线指向下面注明为“on board the vessel”的位置。这说明在 FOB 术语下,卖方的风险一直延伸到货被装上船的时候。一旦货物被装妥上船,卖方的风险就转移到买方。再看透明的长条,它截止的位置和黑条相同,说明卖方要承担所有处理货物的相关手续和费用直到货物被装上船。

术语 DDP 的图示最后部分有一点特别。黑色长条在 place of destination 终止,向下虚线对应的图标是货物停留在运输工具上。这说明该术语下卖方承担货物的风险直至货物运达目的地,准备卸货。而透明长条延伸到最后,之前有一小段的虚线跳空。这表示一方面,卖方承担将货物运抵目的地的相关义务和费用,但并不负责在目的地的卸货。另一方面,卖方还需承担在进口国发生的清关事宜及费用。虚线跳空部分就是指有关卸货的义务和费用,而后面透明长条延续的部分则是指清关相关的义务和费用,其中包括缴纳进口关税。

2.2 “确认货物为合同项下货物”的含义及重要性

《国际贸易术语解释通则 2020》的多个术语解释中都提到,如果由于是买方的责任导致在双方风险转移前出现意外情况,买方应承担相应的风险和费用。但这是要以该货物已被确认为合同项下之货物为前提。所谓的将货物确认为合同项下之货物,就是要通过一定的形式或方式表明货物的身份。它在国际贸易中实际上起到了明确物权的作用。只有明确了买方对货物的所有权,出现意外的情况下买方才有义务承担相关的风险和费用。在实际操作中,确认货物为某合同项下货物的方式很多,要根据货物的特性而决定。如最普通的就是在货物的外部运输包装上印上买方的标志或合同号等内容。如果货物没有包装,则可以用货物的存放位置等来予以区别。

这一知识点在课文中并未提及,仅作为教师对术语进一步解释时的补充内容。

2.3 装运通知的重要性

根据《国际贸易术语解释通则 2020》的规定,买卖双方不论是哪方负责货物的运输安排,都必须就运输安排的状况及最终结果及时、准确地通知对方,以便对方做好相应的准备或采取必要的措施来确保货物的顺利安全运输。这不仅是贸易活动中的一个惯例做法,它的重要性在 Incoterms 2020 中被进一步强调。是否及时、准确地提供了装运通知成为了风险能否从卖方向买方转移的一个重要前提条件。

课文中以 CFR 与 FOB 为例进行了说明。在 CFR 的情况下,卖方负责安排船运,货物装运妥当后卖方应给予买方有关货物运输的充分通知。正常情况下,买方很有可能要为货物购买海运保险,因为自货物装运上船,买方就要承担货物灭失的风险。但如果卖方没有提供及时、准确的装运信息,而使得买方没能够及时购买海运保险,导致买方受损,即使货物已装上船,但此时的风险或损失仍由卖方负责。这就是所谓的风险移后。而在 FOB 情况下刚好相反。这时买方负责安排船运,买方必须向卖方提供有关船名、装船点和交货时间的充分通知以便卖方顺利交货。但如果买方的通知有误,使得卖方货运码头后不能及时或按时装船,出现了额外的费用或意外损失,这时尽管货物还未装上船,要承担额外费用或损失的是买方,而不是卖方。这就是风险提前。由以上例子可见,提供及时、准确的装运通知的重要性不容忽视。

2.4 思政内容的融入

国际贸易实务的教学不能脱离思政的元素的融入,总结起来国际贸易实务学习者应培养以下核心素养:

- 增强学生对国货的自豪感,抵制假冒伪劣商品;
- 提升学生的风险意识,提高其风险控制能力;
- 鼓励学生在贸易实务中践行道德行为规范;
- 培养学生在业务活动履行过程中的契约精神;
- 强调在处理国际贸易相关问题时应秉持相互尊重原则,以维护良好国际关系;
- 善用贸易相关知识与法律武器,维护国家利益。

2.5 语言点

1)正如前文所提到的,由于现在还在使用的有关国际贸易术语的解释有三套,而且各套规则对各术语的解释存在较大的差异,所以贸易商在拟订合同的时候,通常应该加上一句说明该合同所参照的国际公约或惯例。英文的表达为:

This contract is subject to Incoterms 2020.

"be subject to"这个结构在贸易沟通中使用得很频繁。它的基本含义是"depending on…as a condition" 或 "under the condition of …", 通常用于描述一种前提条件。在不同的情况下,应根据其后面宾语的具体内容,参照其基本含义来综合理解。在上面的例句里,它的中文意思是指"以……为依据"。相似的例子还包括:

The contract is subject to approval of the Government of Import Country. (本合同须经进口国政府的批准。)

We make you the following offer, subject to your reply reaching us here before Beijing time June 1, 2023. (我方做出如下报盘,以你方回复北京时间 2023 年 6 月 1 日之前到达我方为有效。)

Subject to Clause 15, no variation in or modification of the terms to the Contract shall be made except by written amendment signed by the parties. (根据第 15 条规定,合同的任何变更或修改,必须以双方签订的修改文本为准。)

2)在阅读《国际贸易术语解释通则 2020》英文版的时候,时常会看到"provided that..."这个用法。它在国际商务合同或其他书面文件中很常见,用于引出一个条件从句,说明某种权利的行使或义务的履行的附带条件。中文可以把它理解成"以……为限"或"如果"。参考下面例句。

The buyer must bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been identified as the contract goods. (买方必须承担自约定的装运期限届满之日起,货物所发生的一切损坏或灭失风险,但以该项货物已正式确认为合同项下之货物者为限。)

We can sell a lot of garments provided that your price is highly competitive. (如果你方价格很有竞争性,我方可大量出售服装。)

3. Solutions to Exercises

I. Multiple choices.

1. There are mainly _____ sets of international rules related to the interpretation of trade terms.

A. two B. three C. four D. five

解:《1932 年华沙–牛津规则》(*Warsaw-Oxford Rules* 1932)、《美国对外贸易定义 1990 年修订本》(*Revised American Foreign Trade Definitions* 1990)和《国际贸易术语解释通则 2020》(*International Rules for the Interpretation of Trade Terms* 2020/*Incoterms* 2020)是三套现在还在使用的关于国际贸易术语解释的规定。尽管 Incoterms 2020 使用最广泛,但也不能忽视了另外两套规定的存在。故答案为 B。

2. There are altogether _____ terms defined by the Incoterms 2020.

A. 6 B. 9 C. 11 D. 13

解:《国际贸易术语解释通则 2020》共分 2 组 11 个术语。故答案为 C。

3. Among all the Incoterms _____ imposes the minimum obligation and cost to the seller.

A. EXW B. CIF C. DAP D. DDP

解: EXW 术语要求卖方交货时,买方要到卖方的场所接受货物,卖方只需把货物划拨本合同项下,其他连将货物装上买方车辆的义务、费用和风险等卖方都不须承担,也不

负责办理在本国的出口清关事宜。因此,卖方在此术语条件下承担的义务和费用是最小的。故答案为 A。

4. Among all the Incoterms _____ imposes the minimum obligation and cost to the buyer.

A. CIF B. FOB C. DDP D. EXW

解: DDP 术语要求卖方把货物一直运送到买方在进口国指定的地点,承担其间所有相关的义务、费用及风险。在货物到达进口国后,卖方还必须办理当地的进口清关手续并缴纳关税。因此,卖方在此术语条件下承担的义务和费用是最大的,而对于买方来说则是最小的。故答案为 C。

5. According to the Incoterms 2020 under FCA the risk of goods will be transferred from the seller to the buyer _____.

A. when the goods are placed at the disposal of the buyer

B. when the goods are delivered to the named place in the exporting country

C. when the goods are given to the nominated carrier

D. when the goods are loaded on the vehicle of a carrier

解: FCA 术语下当卖方货交买方指定承运人时就视为完成交货义务,故答案为 C。

6. The term CIF should be followed by _____.

A. named port of shipment B. named place of destination

C. named ship's rail D. named port of destination

解: 术语后面的指定地点是构成一个完整术语的重要组成部分。CIF 后面应该跟的是"指定目的港"("named port of destination")。故答案为 D。

7. Which of the following statement is TRUE?

A. In the interpretation of Incoterms 2020, "delivery" only means the transportation of goods.

B. According to Incoterms 2020, once the seller delivers he holds no more responsibility about the goods sold.

C. According to Incoterms 2020, if the seller delivers he should be paid no matter what.

D. According to Incoterms 2020, when the seller delivers properly the buyer has to take delivery and fulfills his obligations.

解: 通则中的"delivery"并不单指运输,而是交货,涉及买卖双方按约定进行的货物交接,以及相关义务的履行和风险转移。故答案为 D。

8. According to Incoterms 2020 under CIF if the goods get loose from the hook and fall into the sea during the loading stage, _____ should hold liable for the loss.

A. the buyer B. the seller

C. the carrier D. both the seller and buyer

解: CIF 术语下卖方的风险在货装上船时转移。如果货物在装船过程中从吊钩上滑落入海,此时货物未上船,所以卖方仍然承担风险。故答案为 B。

9. The Incoterms 2020 require the buyer to handle the import customs clearance except under _____.

A. EXW B. FCA C. DDP D. DAP

解：《国际贸易术语解释通则 2020》的规定进一步方便各贸易方的操作。除了 EXW 和 DDP 外，其他 9 个术语都要求贸易商负责在本国的清关手续。DDP 要求卖方负责办理在进口国的清关事宜，而 EXW 则要求买方负责办理在出口国的清关事宜。故答案为 C。

10. Under _____ term it is especially important for the seller to provide shipment notice to the buyer.

A. FOB B. CIF C. FAS D. CFR

解： CFR 情况下买方承担运输过程中的风险但又不负责安排运输，因此卖方及时提供装船通知给买方变得尤其重要，得到了装运的准确信息买方才能够为货物买保险，以降低其运输过程中可能出现的损失。故答案为 D。

II. True or false statements.

1. __T__ The EXW term indicates an actual delivery.

解： 此题正确。买方到卖方的场所受领货物，卖方交货时买方确实收到了货物。

2. __T__ If the sales contract contains provisions contrasting to the definition of the Incoterm used, as far as the provisions are legally recognized by relevant laws and regulations, they will be valid.

解： 贸易术语的使用只是一种习惯用法，约定俗成，它并不是法律法规，不具备法律约束力。而合同条款则受到相关法律的保障。

3. __F__ FOB is a shipment contract term, indicating actual delivery.

解： 在 FOB 情况下卖方的风险在装运港货装上船时转移给买方，即交货发生在货物发运之前，所以属于装运合同术语。前半段的说法是正确的，但在交货发生时货物是交到买方指定的承运人即船公司手上，而买方并没有实际收到货物，这种情况是象征性交货而非实质性交货。

4. __F__ FCA and CPT have one thing in common that the seller delivers when the goods are handed over to the first carrier nominated by the buyer.

解： CPT 术语下提及的“first carrier”应由卖方指定。

5. __T__ Both DAP and DPU should be followed by named places of destination.

解： 术语后面的指定地点是构成一个完整术语的重要组成部分。DAP 和 DPU 后面应该跟的都是“指定目的地”(“named place of destination”)。

6. __F__ Since under CFR the risk will be transferred when the goods are loaded on board, the seller will not hold any responsibility if the buyer finds the goods not in conformity with the contracted specifications later.

解： 卖方有义务向买方提供符合合同要求的货物，尽管卖方已交货，风险已转移，但买方在此情况下仍有权根据其他凭证向卖方追索，如根据销售合同。

7. F All terms starting with a "C" require the seller to bear the main costs of carriage and risk during the transport.

解: C 字开头的术语都是装运合同术语,要求卖方承担主要运输费用,但并不承担运输过程中的风险。

8. F According to Incoterms 2020 under DAP the buyer is not responsible for unloading the goods from the arriving vehicle at the place of destination.

解: DAP 术语要求卖方负责把货物送至在进口国的指定地点完成交货,之前除进口清关以外的相关风险、义务和费用都由卖方承担,但卖方不负责货物到达指定目的地的卸货费用和风险。所以这个责任应由买方承担。

9. F Under CIF the seller has to purchase insurance, therefore he has to bear the risk during the ocean transport.

解: CIF 要求卖方承担货物海运保险的费用,但并不承担运输过程中的风险。

10. T All the terms starting with a "D" are arrival contract terms and they all indicate actual delivery.

解: D 字开头的术语都要求卖方在货物送交目的地(港)时交货,所以都属于到货合同术语。当卖方交货时买方都能够实质性地收到货物本身,所以它们都属于实质性交货。

III. Explain the following terms.

1. shipment contract

答: Shipment contract is a contract using an Incoterm which indicates that the delivery happens at the time or before the time of shipment.

2. symbolic delivery

答: Symbolic delivery is a delivery situation in which when the seller delivers the buyer does not physically receive the goods. This kind of delivery is proved by the submission of transport document by the seller to the buyer.

3. arrival contract

答: Arrival contract means a contract using an Incoterm which indicates that the delivery happens when the goods arrive at the destination.

4. actual delivery

答: Actual delivery refers to a delivery situation in which when the seller delivers the buyer does physically receive the goods.

IV. Short questions.

1. Who pays for loading for shipment under FOB?

答: The seller.

2. Who pays for unloading under CIF?

答：The buyer.

3. Compare and contrast FOB, CFR and CIF.

答：Similarities：a. The seller's risk will be transferred to the buyer when the goods are loaded on board. b. The seller is responsible for export customs formalities while the buyer is responsible for import customs formalities. c. The buyer is responsible for unloading the goods at the port of destination. d. All three terms can only be used for waterway transportation.

Differences：a. FOB requires the buyer to arrange and pay for the ocean transportation; CFR requires the seller to arrange and pay for the ocean transportation; CIF requires the seller to arrange and pay for the ocean transportation and insurance against the buyer's risk.

4. What are the two types of trade terms concerning the transfer of risks?

答：Shipment contract terms vs. arrival contract terms. Under shipment contract terms the seller's risk will be transferred to the buyer before the goods depart from the place/port of shipment. Under arrival contract terms the seller will bear the risk of the goods until the goods arrive at the destination.

5. What are the differences and similarities between CPT and CFR?

答：Major similarities：a. The seller should contract and pay for the major carriage. b. The seller is not taking the risk of loss of or damage to the goods during the transportation.

Differences：a. CPT is applicable to any kind of transportation mode while CFR is only used for waterway transport. b. Under CPT the seller's risk will be transferred to the buyer when the goods are handed over to the first carrier nominated by the seller. Under CFR the seller's risk will be transferred when the goods are loaded on board the vessel.

6. What are the differences and similarities between CIP and CIF?

答：Major similarities：a. The seller should contract and pay for the major carriage. b. The seller is not taking the risk of loss of or damage to the goods during the transportation. c. The seller must obtain insurance against the risks in the main journey.

Differences：a. CIP is applicable to any kind of transportation mode while CIF is only used for sea or inland waterway transport. b. Under CIP the seller's risk will be transferred to the buyer when the goods are handed over to the first carrier nominated by the seller. Under CIF the seller's risk will be transferred when the goods are loaded on board the vessel.

7. If you trade with an American, is the sales contract subject to Incoterms without any doubt? What should you do?

答：No. The Revised American Foreign Trade Definitions 1990 is still in use, especially in the North American area. It has different interpretation about some trade terms. The traders should clarify the choice of rules before any further discussion.

8. What are the most commonly used trade terms?

答：FOB, CFR and CIF.

9. Who is responsible for carrying out customs formalities for exports under an FOB

contract?

答: The seller. According to Incoterms 2020, except EXW and DDP these two terms, all the other nine terms require the seller to handle the export customs formalities, while the buyer the import customs formalities.

10. If a Chinese trader signs an FOB Hamburg contract, is he exporting or importing?

答: Importing. FOB should be used with a "named port of shipment", if Hamburg is the port of shipment, from the Chinese trader's perspective, he is importing.

V. Case studies.

1. An FOB contract stipulated "The shipment will be effected in March 2024." When the goods were ready on 10 March 2024, the seller contacted the buyer for shipment details. The buyer faxed "Please send the goods to the port on 21 March. Shipment will be made on 22 March." The seller sent the goods to the port accordingly. However the nominated vessel did not turn up and the goods had to be stored in the warehouse at the port. On the night of 21 March a fire happened in the warehouse area and part of the goods was damaged. When the vessel arrived two days later the seller and the buyer had an argument about the settlement of the loss. The seller required the buyer to bear the loss caused by the fire, but the buyer believed that the vessel arrived within the shipment period and the loss occurred before the seller delivered the goods, therefore the seller should bear the loss. Please provide your opinion.

析: 1) 首先案例中提到货物发生了损失是由于货物存放在码头仓库期间发生火灾造成的。2) 卖方之所以会把货物存放在码头仓库是因为买方指定的船只在约定时间没有出现。3) Incoterms 2020 有规定,买方有向卖方提供准确、及时的装船通知的义务,如果买方没有履行该义务而导致了货物受损,即使双方没有完成交货,买方也要承担相关损失。

答案:买方应该承担损失。

答题切入点: 1) 分析货物受损原因。2) 根据《国际贸易术语解释通则 2020》买方在提供装运通知方面的义务。3) 解释提供装运通知与完成交货风险转移之间的关系。

2. A contract to sell grain used a CFR term. The grain was officially certified as Grade One at the time of being delivered on board at the port of shipment. After making the shipment, the seller gave the buyer timely notice. However, due to the long voyage, some grain went bad. At the destination, the grain could only be sold as "Grade Three". Consequently, the buyer claimed compensation for the damage. Should the seller pay?

析: 1)货物在装运港已经 "officially certified as Grade One",这就说明货物的质量是合格的,而且是经官方确认的。2) 文中提到"due to long voyage"这说明货物变质的原因是由于运输时间长。

答案:No。

答题切入点:a. 货物变质的原因;b. CFR 术语下风险转移的情况。

3. Under a CIF contract, the goods had been loaded on board the vessel according to the terms of the contract. Then the vessel departed. An hour later, the vessel struck a rock and sunk. The next day the seller's bank presented the shipping documents, insurance policy and invoices to the buyer, and demanded payment.

(1) Knowing that he will not receive the goods, should the buyer pay?

(2) Which party would have to take the loss?

析:本题的关键疑问在于买方明知货物已全部损失,不可能再收到货物,是否还应支付货款。这是考察对"symbolic delivery"这个概念的理解。在 CIF 术语下,卖方交货时买方并没有真正收到货物,卖方的交货是通过货交承运人并获得相关单据(尤其是物权凭证)来实现的。而相应的,买方必须接受交货,也就是买方必须接受卖方提供的相应单据并履行相关支付的义务。

(1) 答案:Yes.

答题切入点:1) 卖方履行其义务的情况;2) CIF 术语对双方交货、领受货物的规定;3) 解释"symbolic delivery"在这里的应用。

(2) 答案: The buyer.

答题切入点:CIF 术语下风险转移的情况。由于本章主要讨论贸易术语的应用,关注的主要是买、卖双方。如果答案是保险公司,则要求说明损失的风险首先是由买方承担的,在风险属于保险公司承保范围内的情况下,保险公司会对买方进行部分或全部的赔偿。

4. A Shanghai company signed a CIF contract to sell Christmas goods to a British company. The USD1 million contract stipulated, "The seller guarantees that the goods arrive at the port of destination by November 15, 2023. If the carriage is late, the buyer can cancel the purchase, and get the refund for the payment." So the shipment was made. Unfortunately, due to mechanical problems, the vessel arrived at the destination a few days late. The buyer refused to accept the goods. As a result, the goods had to be sold on the spot, and the seller lost USD700, 000. Comment on the case.

析:卖方受损的原因是货物达到目的港的时间晚于合同规定的时间,因此买方拒收货物。从表面上看,似乎问题就是出在卖方违约上,但如果仔细分析就会发现,该合同本身的内容就存在自相矛盾的问题。合同用的是 CIF 术语,卖方在货装上船时风险就转移。卖方既不承担运输途中的风险,也不保证货物是否能抵达目的港。CIF 合同本质上是一个"shipment contract"。但加上一条保证到岸时间的条款后,合同的性质发生了变化:它变成了一个"arrival contract"。也就是说,在货物按时抵达目的港之前的一切风险都由卖方承担,否则卖方就是违约。

答题切入点:1) CIF 术语对双方风险及义务的划分,点出"shipment contract"这一概念;2) 解释"arrival date" clause 对合同性质的改变。

5. Benet Chemical Import & Export Company in China entered into a sales contract with a U.S. trading company Cali-Tech. The contract was on the basis of FOB Tianjin term, exporting a certain chemical product from China to the United States. Three days before the deadline of shipment Benet loaded the goods on board the vessel assigned by Cali-Tech. Before shipment the goods had been inspected, showing the quality is in compliance with the contract stipulations. When the vessel arrived the destination San Francisco, the goods were inspected again by local authority. It was found that there were agglomeration in the goods. Further investigation showed that the cause of the quality change is the poor packaging of the goods. Improper packing allowed the good to absorb moisture in the air during the transport, leading to the formation of lumps of raw material. Cali-Tech filed claim against Benet. However, Benet believed that the goods have been tested as qualified before shipment, and the change happened during the transport. Based on the FOB contract, the consequences should be borne by the buyer Cali-Tech. Benet refused the compensation.

1) Was Benet's refusal to compensation reasonable?

2) What lessons can be learned from this case?

析: 在本案例中,货物品质发生变化是由于包装不良造成的,而这个致损的原因在装船前就已经存在了。卖方有义务为货物提供恰当的包装,而没有做到属于卖方在履行义务过程中的过失。如果卖方没有完成应该履行的义务,则无法实现风险的转移。另外根据 FOB 关于风险转移的解释,是指如果途中由于意外事件导致货物的损毁由买方承担,本案例所说的情况不属于 FOB 术语惯例规定的风险范围。

(1) 答案: No.

答题切入点:1) 货物变质损失的真正原因;2) 卖方义务的履行对风险转移的影响:3) FOB 术语下对风险转移的正确理解。

(2) 答题切入点:1) 买方查验货物时需要注意的问题;2) 意识到履行义务对风险转移的影响。

Chapter Three

Export Price

3

1. Background and Suggestions for Teaching and Learning

1.1 背景知识

贸易商在计算价格的时候可以选择不同的方法,像文中提到的成本累加定价、边际成本定价,基于买方的定价和基于竞争的定价。通常贸易商会根据自身企业的特点和所经营产品的特征来决定定价的方法。但在国际贸易中最普遍使用的还是成本累加定价法,所以教科书主要介绍在这种定价方式基础上计算各常用价格的方法。当然在实际报价的时候,贸易商还需要考虑其他的影响因素,如买方市场的接受能力、同行的报价等,以便确定最好的价格。

在根据不同的贸易术语进行价格计算的时候,学习者要注意术语定义中关于买卖双方成本及义务的规定,这与成本的计算进而价格的计算有着直接的关系。大概的计算可以参考教科书表格 3.1。当然一个产品的准确成本一般要在实际发生后才能知道,但根据对产品的了解,有经验的贸易商基本上能够预测出大部分的成本,当预期的利润确定下来后,产品的价格自然也就不难计算了。

《联合国国际货物销售合同公约》(*United Nations Convention on Contracts for the International Sale of Goods* 1980)为贸易沟通过程中买卖双方的行为提供了一个指导。在学习贸易沟通的相关内容时,适当了解该《公约》的内容是很有必要的。该《公约》1980 年 4 月在维也纳通过,共分 4 部分 101 条。第一部分为《公约》的适用范围和总则。第二部分有关合同的成立(见本书附录 2)。这部分主要对报盘,或称为要约以及接受,或称为承诺的规则作了详细的规定。这是与我们教科书中本章节的内容联系最紧密的一个部分,学习者可以进行较深入的阅读。《公约》的第三部分涉及货物买卖,是最主要的部分。其主要内容是买卖双方各项权利和义务、违约及其补救措施等的规定。第四部分是最后条款。这部分的主要内

容是一些程序性和技术性的规定。截至2015年12月29日,核准和参加该公约的共有84个国家,而且公约缔约国所占的贸易份额也已经超过了世界贸易总量的三分之二。中国于1986年12月11日向联合国秘书长递交核准书,对《公约》提出了两项重要保留。一是不同意扩大《公约》的适用范围,只同意《公约》适用于缔约国的当事人之间签订的合同。二是不同意用书面以外的其他形式订立、修改和终止合同。《公约》于1988年1月1日正式对我国生效。后于2013年1月中国政府正式通知联合国秘书长,撤回对《公约》所作"不受公约第十一条及与第十一条内容有关的规定的约束"(第二条保留)的声明,该撤回已正式生效。

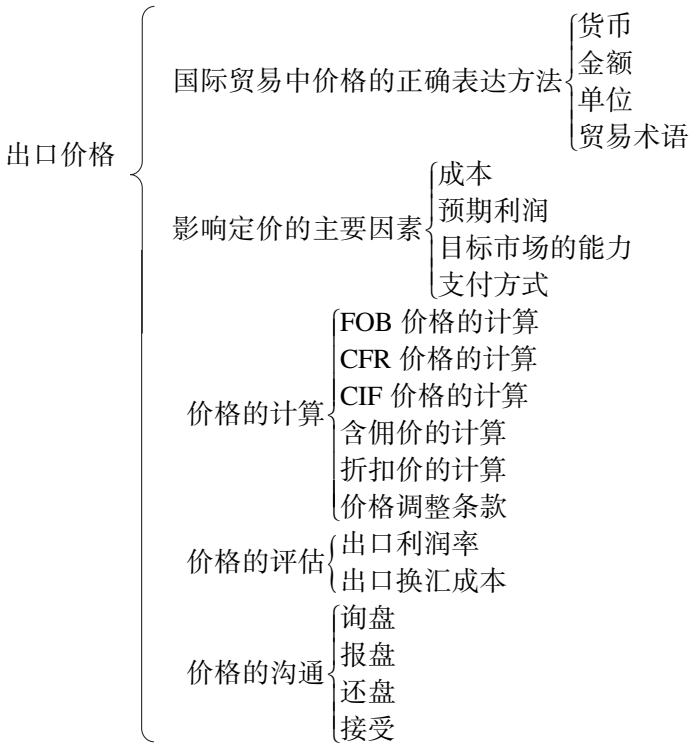
1.2 教学目标及建议

在完成本章节的学习之后,学习者应达到以下目标:

- 正确表达国际贸易中使用的商品价格
- 了解影响定价决策的主要因素
- 掌握基本的价格计算
- 理解佣金和折扣的作用及计算
- 能够解释用于了解利润情况的一些参数
- 正确定义价格沟通过程的四个步骤

这一章节的内容相对简单,重点要掌握的是几个基本价格的计算以及价格沟通各个环节的定义与特征。在语言上学习者也应掌握价格沟通中的一些惯用句型。建议安排6~8个课时进行讲解。

1.3 知识结构图



2. Learning Points

2.1 含佣价格的计算

当一笔交易的过程中有中间商或代理的参与,产品的价格往往就要包含一部分支付给中间商的金额。这时要计算的就是含佣价格。在计算含佣价的时候,一个往往容易出现的错误就是在原净价的基础上直接加上佣金的百分比,如教科书 3.3.4 给出的例子。(老师可以在向学生介绍正确计算公式之前让学生们猜测一下如何计算含佣价。然后就学生所犯的错误引出正确的方法。)其实细想就会发现,按照这种方法计算出来的含佣价,当中间商的佣金被取走后,卖方实际成交的价格是低于原先的净价的。也就是说,卖方的利润受到了损失。所以,正确的方法应该是, 卖方的原净价加上佣金构成了含佣价的百分之百,当佣金被取走后,卖方的净价不受影响。教科书介绍的计算公式就保证了这一点。

2.2 习题解答(Question on the Spot)

解题前先对题中出现的几个惯用符号解释一下。首先,“DZ”是英文“dozen”的缩写,作为表示数量的一个单位。“CTN”是“carton”的缩写,指一般的包装纸箱。“FCL”的全称是“full container loading”,意思是整箱装运。在贸易实务操作中,集装箱运输越来越普遍,很多进口商为了更好地利用运输设备,节省运费,经常根据集装箱的容积来决定购买货物的数量。所以他们会更简洁地与出口商沟通,如题中给出的“price for one GP container of the product”的说法, 意思是价格基于一个 20 英尺集装箱可以装下的数量。这时船务代理给出的运费报价也就是使用一个集装箱从装运港到目的港的运输费用。实际上船公司的收费项目繁多,在后面的章节会有进一步的介绍,这里是以介绍价格计算为目的,所以运费的处理就简化了,只涉及一个海运费。当进口商购买货物的数量比较少时,使用一整个集装箱运货就不合算了。这时船公司会把类似的货物进行整合,把它们拼装到一个集装箱里,这种运输方式就叫作拼箱装运,即是题中提到的“LCL”-“less than container loading”。拼箱装运的运费就会按货物在集装箱中所占的体积来收取,因此很多时候船公司的运费就按每立方米来报价。题中出现的“CBM”指的就是“cubic metre”。

解题的思路从成本的计算开始。题目给出了从工厂买货的成本,而公司的定价政策规定在买货成本的基础上加 5%作为公司固定成本,则产品的出口前单位总成本可求。

Cost: 23×105% = 24.15/DZ

当成本已知,而题中又给出了 10%的利润率要求和银行的汇率,则 FOB 价格和 FOB 含佣价都可求。

FOB: (24.15×110%)/7 = USD3.80/DZ
FOBC5: 3.80/(1-5%) = USD4.00/DZ

要计算另外两个价格,就必须了解运费的情况,所以下一步就是考虑运费的计算。题

中已知的运费都是按集装箱或立方米为单位的,而计算需要的运费是单位产品所需的运费,所以要进行一定的处理。一般情况下,假设一个 20 英尺集装箱能够较保险地装入 28 个立方米的货物,则一个集装箱能装入的箱数就是

Numbers of CTN: 28/(0.45×0.3×0.5)= 414

注意这里计算的结果实际上是 414.8,由于集装箱的容积是有限的,所以不能够像平常的处理四舍五入,而应把尾数都舍去。知道一个集装箱可装的货物箱数,则 FCL 的运费就可求了。

FCL: 1 050/414×1/20=USD0.127/DZ

在 LCL 的情况下,运费的计算相对简单。已知每个立方米的收费,只要计算出每箱的体积,则运费就出来了。

LCL: 65×(0.45×0.3×0.5)×1/20=USD0.22/DZ

有人会觉得具体的数量又没有给,怎么知道计算运费,其实这只是题目故意给的一点迷惑信息,只要知道了运费报价,具体多少货物与价格的计算并不相关,因为定价计算的是单位价格。

运费出来后,只要把相应数值套入公式,另外两个价格也就容易算出来了。

CFR for LCL: 3.80+0.22=USD4.02/DZ

CIF for FCL: (3.80+0.127)/(1−110%×0.5%)= USD3.95/DZ

2.3 出口利润的两个指标

在讨论出口利润率的时候,学习者可能注意到计算公式中的出口收入(export revenue)和出口成本(export cost)后面都标注了 FOB。这是说明在计算出口利润率的时候,通常要按货物离港前的收入和成本计算。换言之,如果价格中包括了如远洋运输和保险的费用,由于这类费用虽然包含在价格里,但它们不是真正的卖方收入和成本,最终是由买方支付、由运输公司和保险公司收取的,所以它们不必作为收入和成本的一部分予以考虑。这样更简化了出口利润率的计算。

出口换汇成本是一个更直接体现每笔交易利润情况的一个指标。它通过计算为赚取一个单位的外汇所耗费的本国货币成本,结合当时的银行外汇牌价,就能够反映出口商每收入一个单位的外汇所能赚取的本币利润。这个指标把外汇与本币结合起来,能更直观地体现外贸收益的特点。正常情况下,这个指标是越小越好,而且以低于银行牌价为限,否则就会亏损。但在实际贸易操作中,尤其是在中国,人们有时会发现一些出口公司的出口换汇成本会高于银行牌价,而仍然有利润可赚。这是怎么一回事呢?其实这是和我国鼓励出口的退税政策有关。出口商向生产商购买货物时须向国家缴纳一定的税款,这部分税款被作为出口采购成本的一部分。由于出口商品实行退税政策,出口商因购买货物所负担的税款由国家全额或按一定比例退还。换句话讲:出口企业购进出口退税商品的实际采购成本应将出口退税部分从含税的采购成本中予以扣除,从而得出实际采购成本。

如果出口商在计算出口换汇成本时是以含税成本计算,而未对退税部分予以处理,则可能出现出口换汇成本高于银行牌价的现象,因为实际上还有一部分成本未被扣除。如果国家不存在退税的政策,那么出口换汇成本则必须保证不高于银行牌价,交易才不会亏损。

2.4 价格的沟通

询盘是贸易一方向另一方表达交易意向的一个动作。最常见的情况就是潜在买方向供应商询问商品的有关信息和价格。有时候买方会在同一时间向几个供应商发出询盘。但是询盘并不仅仅局限于买方向卖方表达交易意向,卖方也有可能向买方发出询盘。很多情况下卖方会就其经营的产品主动向潜在买方提供情况,以便引起买方兴趣,征询购买意向。因此,询盘是可以双向进行的。

在沟通过程中,要确定一条信息是否是一个报盘,其中一个很重要的条件就是看该信息是否是向"一个或一个以上特定的人"提出的。如何理解"特定的人"呢?所谓特定的人,是指有具体身份,而且能够被确定为该信息的指定接收者的人。例如,人们经常在一些大型超市门口收到一些派发的宣传单张。宣传单张上印刷有各种商品的图片和价格,这些单张能否被看成是报盘呢?由于单张的派发是随机性的,收到单张的人并不是一些具体、特定的对象,不能被定义为"特定的人",所以宣传单张不是报盘。

沟通中出现的还盘,关键是要掌握它的本质和构成要素。从还盘的定义来看,它是一种对报盘有添加、限制或其他更改的答复,其实质就是对该报盘的拒绝。所以当还盘的答复到达时,原报盘也就被终止了。由于还盘有终止原报盘的作用,了解构成还盘的条件就非常重要。根据《联合国国际货物销售合同公约》,还盘是对报盘进行了实质性的变更。实质性变更主要指在有关货物价格、付款、货物质量和数量、交货地点和时间、一方当事人对另一方当事人的赔偿责任范围或解决争端等方面的添加或不同条件。如果对报盘的答复中包含有添加的或不同的条件,但这些条件并没在实质上对原报盘构成改变,这类答复是否被认为是还盘就取决于报盘人的态度了。如果报盘人对条件不能接受,应在不过分迟延的期间内以口头或书面通知表达其反对意见,此时答复就被当作是还盘。如果报盘人不就变更条件做出反对,则答复仍构成接受。合同的条件就以该项报盘的条件以及答复中所含的更改为准。这部分的理解还可以通过阅读附录二进行。

2.5 语言点

教科书已经为价格沟通的四个步骤提供了相应的参考句型和语言,本章的语言点就不再做介绍了。这里就课文中给出的几个例子提供参考中文翻译。

例 1. 询盘

从贵方在《海外期刊》上所登的广告我们得知贵方有意以优惠的价格提供大量用于生产××产品之注塑机和压铸机的二手模具和压型。就贵方所有存货请向我方提供包括以下信息的详细报价:

1) 模具规格

2) 模具的主要尺寸和重量

3) 模具所出塑料或金属产品的重量

4）模具的生产材料以及电镀材料

5）热处理

6）使用期限(额定的及已使用的)

7）模具是否修理过

8）模具上的标志

如要下单,贵方能够提供哪些如施工图、测试报告或证书之类的技术文件?

例 2. 报盘

我方已收到你方 2015 年 3 月 17 日来信,得知你方希望我方就 80 公吨发往欧登塞的标题货物予以报价。

作为回复,我方现做如下报价,以你方回复北京时间 4 月 29 日前到达我处为有效。

“80 公吨核桃仁,2015 年收成,良好平均品质,十月装运,CIF 欧登塞含 2%佣金价格每公吨 250 美元,包括投保发票总价 110%的一切险和串味险。”

由于从这里没有到欧登塞的直达船,货物不得不在哥本哈根转运。请注意从哥本哈根到欧登塞的额外费用已被包含在所报价格里。我方等候你方的早日回复。

例 3. 报盘

你方 2015 年 3 月 28 日的来信收悉。如信中要求,我方用空邮另封寄去一本目录和两本印花布料的样本。希望它们能够如期到达,有助于你方进行挑选。

为在你我间建立起具体的交易,我方很高兴向你方作出优惠报盘如下,以我方最终确认为准。

货号:99028 印花衬衫布

花色号:99028-1B

规格:20×30

数量:16 000 码

包装:布包或木箱装,由卖方决定

价格:CIF 鹿特丹每码 25 美元

我方相信以上报价必能被你方接受,并充满兴趣地等待你方的试单。

例 4. 还盘

感谢你方 97028 号报盘。与我方上次订单的 97001 号报盘相比,你方现在的价格为集装箱运输,并上涨了 3%。

确实,剪羊毛机的市场价格有所攀升。但我方想指出,你方目前的报价是基于 CFR 条款,而且集装箱运输的运费比平时的运费要低,价格的上涨可以通过省下的运费来抵消。所以此次订单的单价应与我方上次的订单相同。请考虑我方的意见并传真你方的确认。

例 5. 对还盘的回复

我方已经认真研究你方 3 月 29 日的电子邮件。你我公司已合作多年,我方很愿意应你方要求降低价格,但有些困难。在最近三个月我方原材料的成本激升,你方所提出的降价 10%,如果不相当程度地降低质量标准,则无法实现。而我方是不会这样做的。我方建议,10 000 美元或以上的订单所有产品价格降低 5%,而不是花瓶的价格下降 10%。有

这样数量的订单我方才能够做到降低价格而不降低标准。

希望你方同意我方的建议,希望能够像过去一样收到你方的常规订单。

例 6. 接受

很高兴地通知,我方已接受你方 2015 年 7 月 1 日的报盘。请尽早传真你方回复。

3. Solutions to Exercises

I. Multiple choices.

1. A message bearing the content as "… have the intention to purchase 1,000 gross 'Black Girl' toothpaste, please quote us the best price and the earliest shipment time" is called _____.

A. an offer　　B. an inquiry

C. a counteroffer　　D. an acceptance

解: 文中内容表达了一个购买的意愿,并询问有关价格和船期,所以是一个询盘。故答案为 B。

2. If the CIF price of a product is USD100/set, freight charge USD10/set, insurance premium USD10/set, commission rate 2%, the commission payment based on CIF price should be _____.

A. USD1.60/set　　B. USD1.63/set

C. USD2.00/set　　D. USD2.04/set

解: 要计算佣金的金额,就必须先计算出含佣金的 CIF 价格。

$$CIFC2 = 100/1-2\% = 102 \qquad 102\times 2\% = 2.04$$

故答案为 D。

3. Which one of the following prices is correctly expressed? _____.

A. CNY3.50 CIF Hong Kong　　B. USD3.50 per piece CIF

C. RMB3.50 per piece CIFC London　　D. USD3.50 per piece CIFC2 London

解: 答案 A 中缺少了价格的单位;答案 B 在 CIF 后面漏掉了目的港的名字;答案 C 没有注明佣金的比例,所以正确的 D,具备了正确表达价格的四个要素。

4. According to CISG, a contract can be established when _____.

A. an acceptance becomes effective

B. the seller and buyer sign on a written contract

C. the contract is approved by authorities

D. an offer reaches the offeree

解: 根据 CISG,当一方接受另一方的报盘时,合同就可以确立了。故答案为 A。

5. When the offeree makes modification to _____, his reply may not be seen as a counteroffer.

A. the price　　B. the payment term

C. the packing　　D. the quality and quantity

解：如果一方对另一方的报盘在价格及支付方式、货物质量及数量、交货地点及时间、双方对对方所负责任和纠纷解决方法上进行重要更改，则被认为是对原报盘进行还盘。如果对以上提及内容以外的东西进行修改，则视报盘方的反应而定，不一定构成还盘。故答案为 C。

6. An offer will be terminated when _____.

A. it is rejected　　B. it is counteroffered

C. it is legally revoked　　D. all of the above

解：一个报盘在以下几种情况下都会被终止：被合法撤回或撤销；在有效期内未被接受；被拒绝或由于不可抗力使报盘中的承诺的义务无法实现。故答案为 D。

7. A cabled offer reached the offeree on 12/03. However one day before the offeror had informed the offeree by fax that the offer had been invalid. This act can be considered as _____.

A. a withdrawal of an offer　　B. an amendment of an offer

C. a new offer　　D. a revocation of an offer

解：报盘方在初始报盘到达询盘方之前通过另外一则消息终止了原报盘，这是对该报盘的撤回行为。故答案为 A。

8. A foreign buyer e-mailed that "offer dated 10 Aug. accepted, if 5% commission included". This is _____.

A. an acceptance　　B. a counteroffer

C. an inquiry　　D. an offer

解：尽管文中出现了"accepted"的字眼，但该则消息对价格进行了修改，所以应被视为还盘。故答案为 B。

9. ABC made an offer to XYZ. Under which condition can the two parties establish a deal? _____.

A. EFG which is recognized by XYZ accepted the offer within validity period.

B. Based on previous experience, XYZ indicated acceptance without receiving the offer.

C. XYZ accepted the offer within validity period, but suggested earlier shipment.

D. Within the validity period, XYZ accepted the offer completely.

解：A 答案中 EFG 并非报盘的对象，他做出的接受没有效力；在 B 答案中 XYZ 没有收到报盘的情况下表示接受，也是没有依据的；C 答案中 XYZ 提出了"earlier shipment"，这其实是一个还盘，不是接受。故答案为 D。

10. The standard form of a price consists of the following items EXCEPT _____.

A. currency　　B. port or place of destination

C. unit　　D. number

解：构成一个正确价格的四要素应该是货币、金额、单位和贸易术语(包括术语名和港/地名)。故答案为 B。

II. True or false statements.

1. __F__ Offer and counteroffer are the two essential stages in the communication of price.

解：价格沟通过程中必须经过的步骤是报盘和接受。

2. __T__ Discount is a deduction on the original price given to the buyer as incentive.

解：折扣的实质是对原有价格进行下调以促进成交。

3. __F__ Export profit margin directly reflects the local currency cost of each unit of foreign currency earned.

解：出口换汇成本才体现了为赚取单位外汇所应付出的本币成本，而非出口利润率。

4. __F__ In a price communication, it is always the buyer who makes an inquiry and the seller makes an offer.

解：询盘也可以由卖方发出，询问买方是否有购买意向。

5. __F__ A buyer cabled an acceptance to an offer, but requiring to change payment from D/P at sight to D/A. The seller kept silence. A contract could be established at this moment.

解：买方收到报盘后做出的回复对付款方式作了改变，因此是一个还盘，原报盘失效，不能构成合同的确立。

6. __T__ If an effective offer is accepted unconditionally, a contract can be achieved.

解：如果报盘被无条件接受，则奠定了建立合同的基础。

7. __T__ CISG stipulates that an offer will be effective when it reaches the offeree.

解：尽管有些国家以报盘发出时间为生效时间，但 CISG 规定以到达时间作为报盘生效的时间。

8. __F__ The relationship between the seller and buyer is irrelevant to the pricing decision in international trade.

解：买卖双方的关系也对贸易中价格的确定具有重要的影响。

9. __F__ The commission payment of an FOB price should be calculated based on the FOB net price.

解：佣金的计算一般都以成交的含佣价为基础，有个别商人也会用 FOB 净价来计算，但不普遍，更不是必需的做法。

10. __F__ There is a rule of thumb in international trade stating that any transaction having a profit margin over 10% is a good deal.

解：预期利润率的确定与公司的销售目标和行业特点等因素有关，不能断然认为某个数值就是最好的。

III. Explain the following terms.

1. inquiry

答：An inquiry is the act of a potential client asking for information from the counterpart to his intention in buying or selling a certain commodity.

2. offer

答：An offer is a sufficiently definite proposal addressed to one or more specific persons for concluding a contract, necessarily indicating the intention of the offeror to be bound in case of acceptance.

3. counteroffer

答：A counteroffer is a reply to an offer which contains additions, limitations or other modifications.

4. acceptance

答：An acceptance is a statement made by or other conduct of the offeree indicating assent to an offer.

IV. Short questions.

1. What are the four components of the standard form of a price?

答：A code of currency, a number, a unit and a trade term.

2. While making pricing decision, what major factors should be considered?

答：When a seller is setting his export prices, the major factors he has to consider include cost, anticipated profit, capability of his target market, terms of payment, competition and relationship between the exporter and the importer, etc.

3. What are the differences and similarities between commission and discount?

答：Similarities: Both commission and discount are used as incentive to promote transactions.

Differences: a. Commission payment is an add-up on top of the original price, while discount a reduction; b. Commission mainly applies to transactions which involve middlepersons or agents. Discount can be used without particular prerequisites.

4. When will an offer be terminated?

答：An offer will be terminated when: a. it is legally terminated (being withdrawn or revoked); b. it is not accepted by the offeree within the validity period or a reasonable period of time; c. it is rejected by the offeree; and d. some uncontrollable events happen, preventing the offeror from fulfilling his obligations.

5. What are the possible modifications a counteroffer may make to an offer?

答：If a reply to an offer makes modifications in the following aspects, the reply will be considered a counteroffer: a. price and payment; b. quality and quantity of goods; c. place and time of delivery; d. extent of one party's liability to the other; e. settlement of dispute.

V. Calculation.

1. Under the price of USD25.5/dozen CFR Rotterdam BB Company signed a contract to sell 1,000 dozen of T-shirt. The T-shirt was purchased from factory by CNY130/dozen. BB Company calculated 3% of its product purchasing price as its overhead costs. The local

transport and customs formalities took CNY2, 500 and the container ocean freight was USD1, 500. If the bank exchange rate was 1USD/6.5CNY, what would be the export profit margin for this deal? And what about its export cost for foreign exchange?

答案:export profit margin: 12.56%; export cost for foreign exchange: 5.68

适用公式:$\text{Export profit margin} = \frac{\text{Export revenue (FOB)} - \text{Export cost (FOB)}}{\text{Export revenue (FOB)}}$

适用公式:$\text{Export Cost for Foreign Exchange} = \frac{\text{Export Cost in Local Currency}}{\text{Export Revenue in Foreign Currency}}$

2. The price quoted by a Shanghai exporter was "USD1, 200 per M/T CFR Liverpool". The buyer requested a revised FOB price including 2% commission. The freight for Shanghai-Liverpool was USD200 per M/T. To keep the export revenue constant, what would FOBC 2% price be?

答案:FOBC 2% Shanghai USD1, 020. 41/M/T

适用公式:FOBC% = FOB/(1 − Commission Rate)

3. AC Company offered to sell goods at "USD100 per case CIF New York". The importer requested a revised quote for CFRC5%. The premium rate for insurance was 1. 05% and mark-up for insurance was 10%. To get the same export revenue, what would AC's new offer be?

答案:CFRC5% New York USD104. 05/case

适用公式:I = CIF × 110% × R

CFRC% = CFR/(1 − Commission)

4. DD Company offered to sell goods at "USD2, 000 per M/T CIF Toronto with All Risks and War Risk for 110% of the value". The importer requested a revised quote for FOB Guangzhou. The freight for Guangzhou-Toronto was USD50 per M/T, and the premium rates for All Risks and War Risk were 1% and 0. 2% respectively. To get the same export revenue, what FOB price should the exporter offer?

答案: FOB Guangzhou USD1, 923. 6/M/T

适用公式:I = CIF × 110% × R

CIF = FOB + Freight + Insurance

5. The price quoted by an exporter was "USD480 per case FOB Shanghai". The importer requested a revised quote for CIF Auckland. If the freight was USD50 per case, 110% of the value was to be insured and the premium rate for insurance was 0. 8%, what would the new price be ?

答案: CIF Auckland USD534. 7/case

适用公式:CIF = CFR/(1 − 110% × R)

CFR=FOB+Freight

6. X Company signed a contract to export two machines at an initial price (P_0) of USD5 million each. At the time of setting P_0, the material price index (M_0) was 110, the wage index (W_0) was 120. The contract contained a price revision clause that allowed the final price to be set on delivery.

At the time of delivery, the material price index (M) was 112 and the wage index (W) became 125. If the following ratios remained constant:

A (the management fee and profit as a percentage of the price) = 15%

B (the material cost as a percentage of the price) = 30%

C (the wage cost as a percentage of the price) = 55%

What is the final price (P)?

答案:USD5.14 million

适用公式:$P=P_0\cdot(A+B\cdot M/M_0+C\cdot W/W_0)$

VI. Case studies.

1. On Nov. 20th, Lee Co. offered to sell goods to Dee Inc. at USD500 per case CIF London, "Offer valid if reply here 11/27." On Nov. 22nd Dee cabled back, "Offer accepted if USD480 per case." As Lee was considering the bid, the market price went over USD500. On Nov. 25th, Dee cabled an unconditional acceptance of Lee's initial offer. Could Lee reject Dee's acceptance?

析:1) 11月22日 Dee Inc. 的回复对价格进行了更改,因此这是一个还盘。当 Dee Inc. 对报盘进行还盘,原来的报盘就自动中止了。在这个前提下,Lee Co. 可以采取任何行动而不须顾虑先前的报价。2) 尽管 Dee Inc. 在原报盘的有效期内又发出了一个无条件接受报盘的回复,但由于之前他们已经进行了还盘,所以此时的接受无效。

答案:Yes.

答题切入点:1)还盘的定义;2)报盘中止的因素。

2. X offered to sell goods to Y, "Shipment within 2 months after receipt of L/C, offer valid if reply here 5 days." Two days later, Y cabled back, "Accept your offer shipment immediately." X didn't reply. Two more days later, X received Y's L/C requiring immediate shipment. At this time, the market price of the goods went up by 20%. What options did X have to deal with Y?

析:1) Y在两天后的回复中虽然声明接受报盘,但同时要求"shipment immediately",这是对原报盘的船期"shipment within 2 months"进行了修改,因此构成了一个还盘,原报盘则被中止。2) 在这个前提下,再来考虑X都有哪些选择以及哪个是最可能或最好的。

答题切入点:1) 还盘的定义;2) 报盘中止的因素;3) X可能有的各项选择;4) X最可能选择的做法及原因。

3. Chinese trading company Chiro Trade made an offer to an American importer

DoultonBuy on Feb 2nd to sell beans. In the offer among the other content it is stated that "Packing in sound bags. Offer valid for 10 days." On Feb 9th DoultonBuy replied "Your offer dated 02/01 accepted, packing in new bags." After receiving the reply Chiro Trade started to prepare the goods. One week later the prices of beans in international market suddenly dropped deeply. When Chiro Trade contacted DoultonBuy for shipping marks, DoultonBuy responded "We made change in packing in our fax dated 02/09 and you did not confirm it. Therefore contract was not able to be establised." However Chiro Trade insisted that DoultonBuy had made acceptance and contract had been made. The two parties had arguement about this. Please provide your opinion.

析:1）买方 2 月 9 日作出的回复是对原报盘的接受,但包含对包装上的改动。对包装的改变不属于实质性修改,并不直接构成还盘。2）根据 CISG,对报盘表示接受而对其内容作非实质性改变时,仍构成接受。如果发盘人对此表示反对,则要及时通知对方,否则合同条件就以原报盘的条件以及接受通知内所载的更改为准。3）本案例中卖方对包装变动并无异议,合同就应按照"packing in new bags"的条件成立。如果买方拒不履约,卖方可以根据 CISG 提出索赔。

答案切入点:1）接受的定义;2）接受包含非实质性修改内容时的处理,包括合同成立的条件;3）如买方拒不履约时卖方的应对。

Chapter Four

Terms of Commodity

4

1. Background and Suggestions for Teaching and Learning

1.1 背景知识

在国际贸易中,商品的名称、品质、数量和包装是交易的基础,贸易双方就此进行磋商并达成一致后,才能进一步考虑货物的价格、运输、保险和货款支付等其他交易条件。

首先,明确规定标的物及其品质要求,这是买卖双方商订国际贸易合同时需首先达成一致的条款。由于进入国际市场的货物种类繁多,即使是同一种商品,其品种、花色、质量、产地、外观等也会有所不同,因此,标的物及其品质的不同,不仅会影响商品的用途、运输方式,而且会造成价格上的差异。其次,合同的标的必须以一定的量来表示,数量的约定是一项有效的货物买卖合同所不可或缺的内容。此外,在国际贸易中,商品的包装也是一项必不可缺的重要内容。按照一些国家的法律,合同中有关包装的规定是商品说明的组成部分。包装不仅是保护商品在流通过程中的品质完好和数量完整的重要条件,而且还会对货物的运输和销售产生影响。

总之,商品的名称、品质、数量和包装都是直接关系到当事人双方的权益的交易条件,均须在买卖合同中做出具体规定以明确责任。《联合国国际货物销售合同公约》以及许多国家的合同法和货物买卖法都把品质、数量、包装条款认定为贸易合同的主要条件或交易中必不可少的条件,所以,买卖双方磋商交易时,必须就商品的名称、品质、数量与包装这些主要交易条件达成协议,并在合同中做出明确具体的规定。

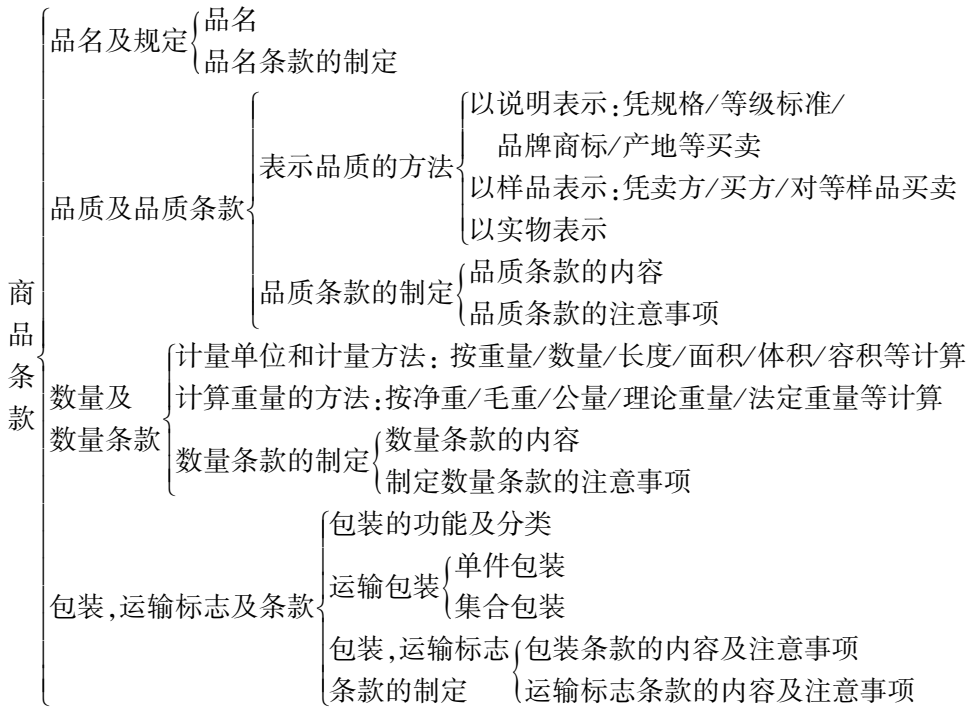
1.2 教学目标与建议

完成本章的教学内容后,学生应掌握以下的内容:

- 商品的品质及表示方法
- 度量衡制度,计量单位及计量方法
- 计算重量的方法
- 商品包装的作用和种类,运输包装的标志,种类及主要内容
- 合同中商品的品名,质量,数量与包装的主要交易条款的制定

这一章节是商品的条款,主要介绍国际贸易中商品的品质的表示方法,常用的度量衡制度,各种计量单位及计量方法(其中的重点是计算重量的方法),商品包装的作用和种类,运输包装的标志,种类及主要内容,以及合同中商品的品名、质量、数量与包装的主要交易条款的制定,内容繁多,建议用6~8个学时。

1.3 知识结构图



2. Learning Points

2.1 FAQ 和 GMQ

FAQ 和 GMQ 是以标准物表示交易商品质量的两种方法。

1) FAQ 即“良好平均品质”(Fair Average Quality),指一定时期某地出口货物的平均品质水平,一般是指中等货而言,也称大路货。其具体解释和确定方法有:

- 指农产品的每个生产年度的中等货。一般是由生产国在农产品收获后,经过对产品进行广泛抽样,从中制定出该年度的“良好平均品质”的标准和样品,并予以公布,作为

该年度的 FAQ 的标准。在我国出口的农副产品,也常用“FAQ”来说明品质的。但是,我们所说“FAQ”一般是指“大路货”,是与“精选货”(Selected) 相对而言的。

- 是指某一季度或某一装船月份在装运地发运的同一种商品的“平均品质”。它一般是从各批出运的货物中抽样,然后综合起来,取其中者作为良好平均品质的标准。它可由买卖双方联合抽样,或共同委托检验人员抽样,送交指定的机构(可以是进口地) 的专业公会检验决定。

因此,在合同中除了标明“FAQ”之外,还应订有具体的年份和具体的规格。如我国出口的农副产品的品质条款, 除了在合同中标明大路货之外,还应订有具体规格。

2) 上好可销品质(Good Merchantable Quality,或 GMQ)指卖方交货品质只需保证为上好的,适合于销售的品质即可。显然这种标准太过于笼统,一般只适用于木材或冷冻鱼类等物品。我国在对外贸易中很少用。

2.2 商标和品牌

商标(Trade Mark)是生产者或经营者用来说明其生产或销售的商品的标志, 它通常由文字、图形、字母、数字、三维标志和颜色等组成。品牌(Brand Name)是指工商企业给其制造或销售的商品所冠的名称,以便与其他企业的同类产品区别开来。一个品牌可用于一种产品,也可以用于一个企业的所有产品。一般说来,商标是向政府注册的受法律保障其专用权的品牌。品牌与商标不同之处主要是商标能够得到法律保护,而未经过注册获得商标权的品牌不受法律保护。所以说,商标是经过注册获得商标专用权从而受到法律保护的品牌。

2.3 样品与凭样买卖

1) 样品:样品通常是指从一批商品中抽取出来的或由生产、使用部门加工、设计出来的,足以反映和代表整批商品品质的少量实物。凡是以样品作为成交和交货依据的,即称凭样成交。当提供样品的一方为买方时,称为买方样(buyer's sample);反之为卖方样(seller's sample)。一般说来,国际货物买卖中的样品,大多由卖方提供。当然凭买方样品达成交易的也不少见。这里值得注意的是,不管是买方样还是卖方样,样品的选择均要有代表性。

2) “凭卖方样品买卖”时,卖方所提供的能充分代表日后整批交货品质的少量实物,可称为原样(original sample),也称代表性样品(representative sample),或称标准样品(type sample)。向买方送交样品时,卖方应留存的一份或数份同样的样品,称为复样(duplicate sample),也称留样(keep sample),以备将来组织生产、交货或处理质量纠纷时作核对之用。

“凭买方样品买卖”时,在我国也称为“来样成交”。由于买方熟悉目标市场的需求状况,买方提供的样品往往更能直接地反映出当地消费者的需求。买方出样在我国出口交易中有时也有采用,但在确认按买方提交样品成交之前,卖方必须充分考虑按来样制作特定产品所需要的原材料供应、加工技术、设备和生产安排的可行性,以确保日后得以正确履行合同。

在实际业务中,如卖方认为按买方来样供货没有十分把握,卖方可根据买方来样仿制、或从现有货物中选择品质相近的样品提供给买方确认。这种样品称为对等样品(counter sample),回样(return sample)或确认样(confirmed sample)。如买方同意采用回样交易,就等于把"凭买方样品买卖"变为"凭卖方样品买卖"。

为了避免买卖双方在履约过程中产生质量争议,必要时还可使用封样(sealed sample),即由第三方或由公证机关在一批货物中抽取并封存同样质量的样品若干份,由第三方或公证机关留存一份备案,其余供当事人使用。

3) 采用凭样成交时,应注意下列事项:

- 注意选择适于凭样成交的商品:一般地说,凡不能用具体的质量指标和科学方法来表示其品质的,或在色、香、味和造型方面有特殊要求的商品,才适于凭样成交,如工艺品、服装样式和部分轻工业品与土特产品。
- 注意样品的代表性:不能偏高或偏低,偏高会给日后交货工作造成困难,引起争端;偏低会影响商品的售价。
- 制定品质机动:对货物和样品难以达到一致的商品,应在合同中订明"交货品质与样品大致相同(Quality shall be about equal to the sample)",或"品质与样品近似(Quality is nearly the same as the sample)"等类似条款,以防因交货品质与样品略有差异而导致买方拒收货物。
- 用对等样品代替买方样品:对等样品又称确认样品,指的是卖方根据买方提供的样品加工复制出一个类似的样品并交买方确认后的样品,以取代买方样品作为日后卖方所交货物的品质依据。在国际贸易中,谨慎的卖方往往用凭对等样品买卖代替凭买方样品买卖,以免因货物品质与卖方样品不符而招致买方索赔,甚至退货的危险。
- 寄出样品时,应留存复样,供日后查对和验证货物之用。
- 若寄送样品供洽谈时参考,则须标明为"参考样品",以免与标准样品混淆。

2.4 商品品质机动和品质公差

商品品质机动(quality latitude)是买卖双方针对买卖商品品质不稳定的客观状况,在规定其品质指标的同时所订立的允许卖方所交货物的品质指标在一定幅度内有灵活性;品质公差(quality tolerance)是国际上公认的产品品质的误差。即使合同没有规定,只要卖方交货品质在公差范围内,也不能视为违约。

品质机动和品质公差的主要区别有:

- 机动性不同:品质公差是指国际上公认的允许产品品质出现的误差,即使合同中没有规定,只要卖方交货品质在公差的范围内,也不视为违约。品质机动幅度则不同,卖方可以根据具体情况在一定幅度内灵活变动。
- 适用的商品不同:品质公差一般适用于工业品,在工业制成品生产过程中,产品的质量指标出现一定的误差有时是难以避免的,这时可以采用国际上公认的误差来确定品质。品质机动幅度主要用于某些初级产品。某些初级产品(如农副产品等)的质量不甚稳定,为了交易的顺利进行,在规定其品质指标的同时,可另订一定的品质机动幅度,即允许卖方所交货物的品质指标在一定幅度内有灵活性。

• 规定的方法不同:品质公差一般是国际上公认的公差,因此其规定的方法也就能够得到确认,但是品质机动幅度其确定的方法也就有很多种,由买卖双方协商决定,如规定范围、规定极限、规定上下差异等。

2.5 溢短装条款

在许多商品的交易中,由于商品特性、货源变化、船舱容量、装载技术包装,甚至意外等因素的影响,要求准确地按约定数量交货,有时存在一定困难。溢短装条款是指买卖双方为了使交货数量具有一定的灵活性和便于履行合同,在合同中合理规定数量的机动幅度。卖方在交货时,可按合同中约定的数量机动幅度范围内多交或少交一定的百分比,买方就不得以交货数量不符为由而拒收货物或提出索赔。溢短装条款一般是在数量条款之中加订的。溢短装条款的内容主要包括机动幅度的百分比,溢短装部分由谁选择以及该部分的作价方法。

在规定溢短装条款的时候应注意以下问题:

• 数量机动幅度的大小要适当:数量机动幅度的大小通常都以百分比表示, 如 3% 或 5%不等,具体应视商品特性、行业或贸易习惯和运输方式等因素,制定合适的数量机动幅度可酌情作出各种不同的规定。

• 机动幅度选择权的规定要合理:在合同规定有机动幅度的条件下,由谁行使这种机动幅度的选择权,一般由履行交货的一方,也就是由卖方选择。但当交货量的大小与承载货物的运输工具关系非常密切时,就得跟承运人商量。如涉及海洋运输,交货量的多少取决于承载货物的船只的舱容量, 在租船时就得跟船方商定。所以,在这种情况下,交货机动幅度一般是由负责安排船只的一方(如 FOB 的买方)选择,或是干脆由船长根据舱容和装载情况作出选择。总之,机动幅度的选择权可以根据不同情况,由买方行使,也可由卖方行使或由船方行使,因此,为了明确起见,最好是在合同中作出明确合理的规定。

• 溢短装数量的计价方法要公平合理:目前,对机动幅度范围内超出或低于合同数量的多装或少装部分,一般是按合同价格结算,这是比较常见的做法。但是,数量上的溢短装在一定条件下关系到买卖双方的利益。在按合同价格计价的条件下,交货时市价下跌,多装对卖方有利,但如果市价上升,多装却对买方有利。因此,在买卖一些价格容易变动的商品时,为了防止有权选择多装或少装的一方当事人利用行市的变化,有意多装或少装以获取额外的好处,也可在合同中规定,多装或少装的部分,不按合同价格计价,而按装船时或货到时的市价计算,以体现公平合理的原则。

2.6 中性包装 vs. 定牌

中性包装指既不标明生产国别、地名和厂商和名称,也不标明商标或牌号的包装。也就是说,在出口商品包装的内外,都没有原产地和出口厂商的标记。中性包装包括无牌中性包装和定牌中性包装两种。前者是指包装上既无生产地名和厂商名称,又无商标、品牌;后者是指包装上仅有买方指定的商标或品牌,但无生产地名和出口厂商的名称。采用中性包装,是为了打破某些进口国家与地区的关税和非关税壁垒以及适应交易的特殊需要(如转口销售等),它是出口国厂家加强对外竞销和扩大出口的一种手段。

定牌指按照买方要求在出口国商品和包装上使用买方指定的商标或牌名的做法。我国出口业务中,定牌有两种情况。一是接受客户指定的商标,但在商标、牌名下标明“中华人民共和国制造”或“中国制造”字样,这是为了利用这些进口商的经营能力,发挥其经营积极性。另外一种情况是接受对方指定的商标,并根据对方要求不加注生产国别标志,即定牌中性包装。

2.7 合同中的包装条款

合同中的包装条款一般包括包装材料、包装方式、包装规定、包装标志等。在订立包装条款时,应注意以下事项:

- 要考虑商品的特点和不同运输方式的要求。对不同的商品和不同的运输方式,在约定包装材料、包装方式、包装规格和包装标志时,必须从商品在储运和销售过程中的实际需要出发,使约定的包装科学、合理,并达到安全、适用和适销的要求。
- 买卖双方对包装的各项事宜在合同中要有具体明确的表示。一般不宜用含义笼统的术语,如“适合海运包装”、“习惯包装”等,以免引起争议。
- 按照国际贸易习惯,运输标志一般由卖方决定,并无必要在合同中作出具体规定,但如果买方要求指定,就需要在合同中对买方提供运输标志的时间等作出具体规定。
- 包装费用一般已包含在商品货价之内,不另在合同中列出。但如果买方要求特殊包装,则超出的包装费用一般由买方负担,并应在买卖合同中作出具体规定。

2.8 语言点

1)表示商品品质的语言表达

“quality”和“sample”是在表示商品品质时常用到两个词。如:

We usually export commodities of high quality.(我们通常出口高品质的商品。)

Having examined sample received from you, we can now confirm that we are able to provide the commodity of the type and quality you require.(看了你方寄来的样品,现可确认我方可提供你方所需的种类和品质的商品。)

We regret to say that the goods we have just received from you are of very poor quality, which is far below the standard specified in the contract.(很遗憾,我们收到的货品质量很差,与合同规定相差甚远。)

According to CISG, the seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.(根据《联合国国际货物销售合同公约》,卖方交付的货物必须与合同所规定的数量、质量和规格相符,并须按照合同所规定的方式装箱或包装。)

The samples are taken at random, so they can adequately represent the goods of the shipment as a whole.(样品是随意抽取的,足以代表整批货的品质。)

“sample”既可作名词,又可作动词用。如:

We must sample the consignment before shipment.(这批货发货前必须要抽样。)

2）合同中的包装条款的语言组织

合同中包装条款通常由三大部分组成：用什么装（有时会进一步说明用什么材料衬垫或衬填以及加固包装的方式）、装多少、一个大包装（装运包装）里有多少个小包装（销售包装）。有时，如在包装费用另外算时，还有包装费用的计算（如无说明，则报价已含包装费用）。

用什么装：相应的英文是 Goods to *be packed in* ×××

用什么材料衬垫或衬填：通常使用短语 be lined/padded with 表示，如：to be packed in wooden cases *lined with* waxed paper

包装用什么加固或加封：通常使用短语 be strengthened/reinforced with 或 be secured/sealed with 表示，如：*be strengthened/reinforced with* metal straps；*be secured/sealed with* plastic seal straps.

装多少：相应的英文是 to *be packed in* ××× of ××× net each

或 to *be packed in* ×××, each containing ×××

大小包装之间的关系：通常要用介词 to 表示，如：24 boxes *to* a carton

包装费的支付：相应的英文是 Packing cost is *to be for Buyer's account*

或 Packing cost is *to be borne by Buyer*

例：

Packing: to be in iron drums of 100 kg net each, 190 drums to a 20'container (FCL)（包装：铁桶装，每桶净重 100 公斤，一个二十尺货柜可装 190 桶。）

Packing: in single gunny bags of 30 kg each, gross for net, 10 bags on a pallet.

（包装：麻袋装，每桶 30 公斤，以毛作净，10 包装 1 托盘）

Packing: to be packed 3 dozen to a packet, 4 packets to a box and 10 boxes to a carton.（包装：3 打装一包，4 包装一盒，10 盒装一箱。）

3. Solutions to Exercises

I. Multiple choices.

1. Counter sample can also be called _____.

A. duplicate sample　　B. sealed sample

C. confirmed sample　　D. reference sample

解：对等样品是卖方根据买方提供的样品加工复制出一个类似的样品并交买方确认，这种经确认后的样品也称为"回样"或"确认样品"。故答案为 C。

2. "Quality to be considered being about equal to the sample" is a typical expression of _____ under sale by sample.

A. quantity latitude　　B. quality latitude

C. more or less clause　　D. quantity tolerance

解：采用凭样成交时，当卖方对品质无绝对把握时，应在合同品质条款中作出品质机动的规定，故答案为 B。

3. "1,000 pairs of shoes" is an example of using _____ to specify quantity.

A. weight B. length C. volume D. number

解:在国际贸易中,不同类型的商品,需采用不同的计量单位。"1 000 双鞋子"显然是按数量计算,故答案为 D。

4. _____ is NOT frequently used in international trade.

A. Metric System B. British System

C. U. S. System D. French System

解:在国际贸易中,通常采用公制(Metric System),英制(British System),美制(US System)和国际单位制(International System of Units, 简称 SI),故答案为 D。

5. The method suitable for measuring the weight of the importing wool is the _____.

A. theoretical weight B. conditioned weight

C. weight settled by the buyers and sellers D. dry net weight

解:国际贸易中的羊毛、生丝等商品有较强的吸湿性,其所含的水分受客观环境的影响较大,故其重量很不稳定。为了准确计算这类商品的重量,国际上通常采用按公量计算的办法。故答案为 B。

6. If the actual net weight of a shipment of wool is 30 M/T with an actual regain rate of 20%, the conditioned weight is _____. (suppose the standard regain rate is 10%)

A. 25 M/T B. 32.7 M/T C. 27.5 M/T D. 33.75 M/T

解:公量,即以商品的干净重(指烘去商品水分后的重量)加上国际公定回潮率与干净重的乘积所得出的重量,其计算如下:

$$\text{Conditioned Weight} = \text{Actual Weight} \times \frac{1+\text{Standard Regain Rate}}{1+\text{Actual Regain Rate}}$$

$$= 30 \times \frac{1+10\%}{1+20\%}$$

$$= 27.5$$

故答案为 C。

7. According to UCP600, "about" allows the quantity to be _____ more or less.

A. 3% B. 5% C. 10% D. 15%

解:UCP600 Article 30 a. "约"或"大约"用于信用证金额或信用证规定的数量或单价时,应解释为允许有关金额或数量或单价有不超过 10%的增减幅度,故答案为 C。

8. More or less clause in a sales contract mainly includes the following EXCEPT _____.

A. percentage of more or less B. total amount

C. party determining the more or less D. pricing for the more or less part

解:数量的增减条款或溢短装条款通常包括数量的机动幅度,机动幅度选择权的规定以及溢短装数量的计价方法,故答案为 B。

9. A credit stipulates that the quantity of the bulk cargo is 1,000M/T and total amount is

USD0. 9 million. It shows no "more or less clause" and partial shipment is not allowed. According to the UCP 600, _____.

A. the quantity and total amount of the goods delivered should not increase or decrease.

B. the quantity and total amount of the goods delivered can be 10% more or less.

C. the quantity and total amount of the goods delivered can be 5% more or less.

D. the quantity of the goods delivered can be 5% more or less, while the total amount cannot exceed USD0. 9 million.

解: 根据 UCP 600 第三十条 b. 在信用证未以包装单位件数或货物自身件数的方式规定货物数量时,货物数量允许有 5%的增减幅度,只要总支取金额不超过信用证金额。所以只有当货物的数量以重量计算(不是以包装单位件数或货物自身件数的方式规定),且总支取金额不超过信用证金额,货物数量允许有 5%的增减幅度。故答案为 D。

10. According to international trade practice, _____ should provide the shipping marks unless otherwise stipulated in the contract.

A. the issuing bank B. the sellers

C. the buyers D. the carrier

解: 按照国际惯例,当合同未对有关的运输标志作出规定时,一般由卖方自行决定,以保证卖方能在合同规定的船期内发运和交货,故答案为 B。

II. True or false statements.

1. __T__ Different measurement system may give different interpretation about the same unit of measurement.

解: 因不同的国家有可能使用不同的度量衡制,因此同样的数量单位,在不同的国家会被解读为不同的数量。

2. __F__ There are various ways in expressing quality in trading. In order to clear out the responsibility, we should adopt sale by sample and sale by specification.

解: 根据联合国国际货物销售合同公约,如同时采用既凭样品又凭规格买卖,则要求卖方交付的货物的品质必须既与样品一致,又要符合合同所规定规格,要做到两全其美,难以办得到,往往给卖方履行合同带来困难。

3. __F__ In order to meet the demand in the international market, we should make efforts to conclude business on the basis of sale by buyer's sample.

解: 卖方通常不愿意承接凭买方样品交货的交易,以免因货物品质与卖方样品不符而招致买方索赔,甚至退货的危险。因此, 卖方可根据买方提供的样品加工复制出一个类似的样品并交买方确认,这种经确认后的样品也称为"回样 counter sample"或"确认样品 confirmed sample"。当对等样品被买方确认后,日后卖方所交货物的品质,则以对等样品为准。

4. __T__ Quality difference within the agreed quality latitude or tolerance will not give rise to the increase or decrease in price unless stipulated otherwise.

解：根据联合国国际货物销售合同公约第五十三条，买方必须按照合同和本公约规定支付货物价款和收取货物。所以除非合同另有规定，凡在品质机动幅度内的货物，买方不得拒收或要求调整价格。

5. __F__ In a sale by specification, if the seller provides a reference sample, the quality of goods delivered shall not only meet the specifications stipulated, but also conform to the sample.

解：根据联合国国际货物销售合同公约，如只是凭规格买卖，则要求卖方交付的货物的品质只要符合合同所规定规格即可。而样品仅仅是参考样，所以交付的货物的品质无须与样品一致。

6. __F__ If the seller delivers goods with quantity greater than that stipulated in the contract, according to CISG, the buyer may take delivery or refuse to take delivery of all the goods.

解：根据联合国国际货物销售合同公约第五十二条的规定，如果卖方交付的货物数量大于合同规定的数量，买方可以收取也可以拒绝收取多交部分的货物。所以买方不可以拒收全部货物。

7. __T__ In accordance with the international practice, unless the contract stipulates otherwise, the more or less part will be priced at the contract rate.

解：根据联合国国际货物销售合同公约第五十二条的规定，如果卖方交付的货物数量大于合同规定的数量，买方可以收取也可以拒绝收取多交部分的货物。如果买方收取多交部分货物的全部或一部分，他必须按合同价格付款。

8. __F__ There is no doubt that one ton equals to 1, 000kg.

解：由于度量衡制度的不同，即使同一计量单位所表示的数量差别也可能很大。如表示重量的“吨”，实行公制的国家一般采用公吨，每吨为 1 000 公斤；实行英制的国家一般采用长吨，每吨为 1 016 公斤；实行美制的国家一般采用短吨，每吨为 907 公斤。

9. __F__ If the price is calculated by the weight of the goods, the gross weight should be used unless stipulated otherwise in the contract.

解：根据联合国国际货物销售合同公约第五十六条，如果价格是按货物的重量规定的，如有疑问，应按净重确定。也就是说，当价格的计算单位是重量单位且未标明具体重量计算方法，如毛重、净重或公量时，应理解为净重。

10. __F__ According to UCP 600, a tolerance not exceeding 5% more or less than the quantity of the goods is always allowed if there is no relevant stipulation concerning quantity latitude.

解：根据 UCP 600 第三十条 b. 在信用证未以包装单位件数或货物自身件数的方式规定货物数量时，货物数量允许有 5%的增减幅度，只要总支取金额不超过信用证金额。所以只有当货物的数量不是以包装单位件数或货物自身件数的方式规定时，且总支取金额不超过信用证金额，货物数量才允许有 5%的增减幅度。

III. Calculation.

Company C has a contract to export 10 metric tons of Seafood, to be packed in cartons each of 40 lb. (1lb=0.453,58kg), with a 5% more or less allowed both in quantity and in amount.

1. How many cartons of Seafood can Company C deliver at most?

2. How many cartons of Seafood should Company C deliver at least?

解: 1lb=0.453,58kg, so 40 lb=18.144kg

Maximum: [10×1,000kg×(1+5%)]/18.144

= 578.7 (Attention: 0.7 should be deleted here)

= 578 cartons

Minimum: [10×1,000kg×(1−5%)]/18.144

= 523.6 (Attention: 0.6 should be added here)

= 524 cartons

Answer: 1) At most, Company C can deliver 578 cartons of Seafood.

2) At least, Company C should deliver 524 cartons.

IV. Explain the following terms.

1. quality latitude

答: Quality latitude means the permissible range within which the quality of the goods delivered by the seller may be flexibly controlled.

2. quality tolerance

答: Quality tolerance refers to the quality deviation recognized (e.g. by some industry), which allows the quality of the goods delivered to have certain difference within a range.

3. sale by counter sample

答: A counter sample is a replica made by the seller of the sample provided, normally by the buyer. In a sale by counter sample, the counter sample will replace the original sample and become the final standard of quality of the transaction. By means of a counter sample, the seller would be more comfortable to prepare the mass products according to a sample provided by himself. Even in the worst scenario that the buyer later finds the counter sample does not match with the original, the seller will not carry any responsibility as the counter sample has been confirmed by the buyer.

4. gross for net

答: In the case of "gross for net", the goods are priced by their net weight but the payment of the goods are calculated on the basis of gross weight instead of the net. The "gross for net" practice will be adopted when the packing may become an indivisible part of the product, such as tobacco flakes; or the packing material is almost of the same value as that of the goods, like grain and fodder.

5. standard regain rate

答: Standard regain rate refers to the ratio between the water content and the dried net weight of the goods which is accepted in the world market or agreed upon by the seller and the buyer.

6. conditioned weight

答: Conditioned weight is adopted for some commodities like wool which is not usually packed in a vacuum container and tends to absorb moisture, as the weight of these commodities is likely to be unstable due to the fluctuation of their actual moisture content and varies greatly from time to time, and from places to places. In addition, these products are of high value, it becomes important for the buyer and seller to reach an agreement on the concept of weight.

7. more or less clause

答: "More or less clause" refers to the stipulation constituting part of the quantity clause in the contract that allows the seller to deliver the goods with a certain percentage of more or less in quantity accordingly. The use of "more or less clause" is for the sake of efficient shipment and less complexity in contract execution because in practice it is not that easy to control the quantity of goods supplied strictly and exactly.

A more or less clause usually concerns three issues: 1) how much more or less should be allowed; 2) which party is entitled to make the decision; and 3) how should the more or less portion of the goods be priced.

8. shipping marks

答: Shipping marks are a type of marking on the shipping packing. It quickens the identification and transportation of the goods and helps avoid shipping errors. International standard shipping marks are usually made up of four parts: 1) Consignee's code; 2) Destination; 3) Reference No. and 4) Number of packages.

9. F. A. Q.

答: F. A. Q. is the abbreviation of "fair average quality". F. A. Q. is a kind of standard used to indicate that the quality of the product offered is about equal to the average quality level of the same crop within a certain period of time (e. g. a year.).

10. neutral packing

答: Neutral packing is a special type of marking rather than a type of packing as its name may indicate. While neutral packing is required, no marking of origin or name of the manufacturer should appear on the product, on the shipping packing or sales packaging.

V. Short questions.

1. What are the two common ways of indicating quality of goods for export?

答: Sale by description and sale by sample are the two common ways of indicating quality of goods for export.

Sale by description is a way to specify the quality of most commodities in international trade. Sale by description may take the form of sale by specification, sale by grade, sale by standard, sale by brand name or trade mark, sale by origin and sale by descriptions or illustrations.

A sale is made by sample when the seller and buyer agree that samples are used as reference of quality and condition of the goods to be delivered. This method is used when it is difficult to describe quality of the commodity by words. According to the supplier of the sample, there are three cases under sale by sample: sale by seller's sample, sale by buyer's sample and sale by counter sample.

2. What are the issues to be concerned when specifying quality clause in a sales contract?

答: When stipulating a quality clause in a sales contract, the following are to be concerned:

- adopting the right way to stipulate the quality: Sale by description is applicable to commodities of which quality can be expressed by some scientific indices. While sale by sample is adopted when it is difficult to describe quality of the commodity by words.
- avoiding double standard, either by description or by sample: When samples are required under a sale by description, it is essential to indicate that the sample is for reference only.
- making use of the quality latitude which allows the seller to have flexibility in controlling the quality because absolute quality is difficult or even impossible to handle.
- in case of a sample provided by the buyer, making use of protecting clause.

3. What are the common ways to measure the weight of export goods?

答: The common ways to measure the weight of export goods include gross weight, net weight, conditioned weight, theoretical weight and legal weight.

- Gross weight refers to the weight of the commodity plus the weight of the packing. Gross weight is applicable to commodities of comparatively low value.
- Net weight means the actual weight of a commodity itself excluding the weight of the packing. According to CISG Article 56, the weight of a commodity is calculated by its net weight unless otherwise stated in the contract.
- Conditioned weight is adopted for moisture unstable commodities with high value, such as wool.
- The weight is a theoretical weight when the total weight of the product is calculated by multiplying the total quantity and the unit weight, rather than measured actually. Theoretical weight is applicable to commodities of standardized sizes and specifications.
- Legal weight is the weight of the goods including the immediate, inner, or direct packing of the goods. According to the customs laws and regulations in some countries, legal weight is usually used as the basis for tariff calculation.

4. What are the different ways of calculating the tare when net weight is used?

答: In international trade, tare can be calculated by actual/real tare, by average tare, by

customary tare or by computed tare when net weight is used and the weight of packing, i. e. the tare, must be deducted.

• Actual/real tare refers to the actual weight of the packing of the commodities. In order to get the actual tare of the goods, each packing of a good has to be weighed in order to get a total.

• By average tare, the weight of the packing is calculated on the basis of the average. The average tare can be calculated by weighing a part of the packing of the commodities and working out the average when the packing materials are uniform and the specifications of goods are standardized.

• Customary tare refers to the recognized weight of the packing when the packing of some commodities are unified and standardized. Therefore, the weight of the packing is known and accepted by everyone and can be used in calculating the net weight.

• Computed tare is the weight of the packing agreed upon by the parties concerned. In this case, the net weight is calculated by deducting the tare previously agreed upon from the gross weight of the commodity.

5. What are the issues to be concerned when specifying quantity clause in a sales contract?

答: When stipulating a quantity clause in a sales contract, the following are to be concerned:

• adopting the right unit measurements

In international trade, the quantity of commodities is always shown as a specific amount in different measurement units such as weight, number, length, area and volume, etc. Since different commodities have different natures and characteristics, the adoption of measurement units varies. Therefore, the quantity of the contract commodity must be measured in the right measurement unit.

• being aware of different measurement units

Due to the existence of different measurement systems in the world, traders need to be aware of the consistency of system. A notable fact is that some units in different systems carry the same name though; they are indicating standards of measurement with significant difference. In addition, it is true that due to the local background and customary practice, different countries adopt different systems of measurement. Therefore, traders need to clarify the use of unit and measurement system to avoid unnecessary disputes.

• making use of the more or less clause which allows the seller to have flexibility in making shipment because absolute quantity is difficult or even impossible to handle

"More or less clause" refers to the stipulation constituting part of the quantity clause in the contract that allows the seller to deliver the goods with a certain percentage of more or less in quantity accordingly. The use of "more or less clause" is for the sake of efficient shipment and less complexity in contract execution because in practice it is not that easy to

control the quantity of goods supplied strictly and exactly.

VI. Case studies.

1. XYZ Company signed a contract to export Red Dates. The contract specified that the date should be "Grade 3". But at the time of shipment, there were not enough third-grade date on hand for delivery. As a result, date of higher quality, Grade 2, were used as substitutes. The seller proudly marked the invoice, "Dates of Grade 2 sold at the price of Grade 3".

(1) Could the buyer refuse to accept the goods? Why or why not?

(2) Would you do differently if you were the seller? How?

析: 本题的解题要点:1) 联合国国际货物销售合同公约第三十五条(1)卖方交付的货物必须与合同所规定的数量、质量和规格相符,并须按照合同所规定的方式装箱或包装;2) 合同本身的品质规定是"Grade 3";3) 实际所交货物的品质是"Grade 2"。

(1) 答案:Yes, 买方可以拒收货物。不论品质比规定的好或差,只要实际所交货物的品质与合同本身的品质规定不同,就是不符。在此情况下,买方有权利拒收货物。

答题切入点:品质不符的理解。

(2) 答案:Yes, 如果我是卖方,我会与买方磋商,寻求买卖双方都能接受的处理方法。

答题切入点:与买方磋商解决。

2. ABX Company sent a sample (moisture 12%; impurity 2%) of exporting goods to a German buyer during negotiation. Later, a contract was signed, and the provision of the specifications was, "Moisture: 14%; Impurity: 4%." Before shipment, the seller again cabled the buyer, "Quality as per sample". After taking the delivery, the buyer had the goods inspected. The inspection result showed: "Moisture 13%; Impurity 3%", which indicated that the quality did not conformed to the terms of contract, and it was lower than that of the sample. As a result, the buyer filed a claim for compensation. Did the seller make any mistake? Why or why not?

析: 答案:Yes,买方可以向卖方提出索赔, 因为卖方交付的货物的品质既不符合合同规定,也不符合样品;在这笔交易中,卖方犯了起码两个错误:

错误 1): 品质条款没有品质机动

某些产品(如农副产品等)的质量具一定的不稳定性,为了交易的顺利进行,在规定其品质指标的同时,应制定一定的品质机动幅度,允许卖方所交的货物的品质指标在一定的幅度内有灵活性。否则单一的品质指标难以达到,往往给卖方履行合同带来困难。

答题的切入点:品质机动条款。

错误 2):品质规定用了双重标准,既凭合同规格买卖,又凭样品买卖。

表示品质的方法很多,品质条款应视商品的特性而定,采取合理的品质规定。凡是能用一种方法表示某种品质的,一般就不宜用两种或两种以上的方法来表示。根据联合国国际货物销售合同公约,如同时采用既凭样品又凭规格买卖,则要求卖方交付的货物的品质必须既与样品一致,又要符合合同所规定规格,要做到两全其美,难以办到,往往给卖方

履行合同带来困难。

答题的切入点:品质规定应避免双重标准,不要既凭合同规格又凭样品买卖。

3. ABC Company signed a contract to export rice. The quantity was 10,000 tons, 1% more or less. So ABC Company made delivery of the goods to fulfill the contract and the actual quantity delivered was 9,950 metric tons. After taking the delivery, however, the foreign buyer demanded an additional quantity (min. 108.5 metric tons; max. 311.6 metric tons) of rice. What went wrong?

析:本题的解题要点:合约中的数量为"吨",是不明确的规定。"吨",在实行公制的国家一般理解为公吨,每吨为 1,000 公斤;在实行英制的国家一般理解为长吨,每吨为 1,016 公斤;在实行美制的国家一般理解为短吨,每吨为 907 公斤。所以,当卖方理解为公吨,每吨为 1,000 公斤;而买方理解为长吨,每吨为 1,016 公斤时,这份合约下卖方实际交货的数量与买方预期收货数量有一定的差别。当卖家实际交货量为 9,950 公吨时,与买家预期收货数量的差别为:

Min.: 10,000×1.016×(100%−1%)−9,950=10,058.4−9,950=108.5 公吨

Max.: 10,000×1.016×(100%+1%)−9,950=10,261.6−9,950=311.6 公吨

答案:由于合同中对数量单位"吨"的规定不明确,导致买卖双方对合同所规定的数量有不同的理解。

答题的切入点:1)数量规定不明确;2)不同度量衡制度下的"吨"表示的实际数量不同。

4. A Beijing company signed a contract to import wool from Australia. The quantity was specified as "20 M/T". When the wool was delivered, it had a regain of 33%.

(1) What is a regain rate?

(2) Why did the buyer get a bad deal?

(3) If the standard regain is 10% and actual regain is 33%, what is the conditioned weight?

析:本题的解题要点:1)文中提到合同约定的数量是"20MT",应理解为净重。因为计算重量的方法有毛重,净重,公量等,而根据联合国国际货物销售合同公约第五十六条,如果价格是按货物的重量规定的,如有疑问,应按净重确定。2)合同商品的羊毛,具有较强的吸湿性,其所含的水分受客观环境的影响较大,故其重量很不稳定。为了准确计算这类商品的重量,国际贸易中买卖双方通常会约定标准(公定)回潮率,采用按公量计算的办法。

(1) 答案:回潮是指货物(纤维材料)在环境温度下吸湿含水的现象。回潮率则是指货物(纤维材料)含水重量占货物(纤维材料)干重的百分比。

答题的切入点:回潮(率)的概念。

(2) 答案:买方这笔交易不划算。因为合同中没有明确规定计算重量的方法,只能按净重计算。因此当卖方实际交货的羊毛,因具有较强的吸湿性而其所含的水分高达 33%是,买方也别无他法,只得按净重(连带 33%的水分)计算付款。

答题的切入点:合同约定计算重量的方法不明确。

(3) 答案:如按公量计算,这批货只有 16.54 公吨。

计算:

$$\text{Conditioned Weight} = \text{Actual Weight} \times \frac{1+\text{Standard Regain Rate}}{1+\text{Actual Regain Rate}}$$

$$= 20 \times \frac{1+10\%}{1+33\%}$$

$$= 16.54$$

答题的切入点:公量的计算。

5. Company H ordered Steel plates from a seller, 400 M/T in total, with 100M/T each for four specifications: 6 feet, 8 feet, 10 feet, and 12 feet, 5% more or less. The actual delivery made by the seller was: 6 feet 70M/T; 8 feet, 80M/T; 10 feet, 60M/T; 12 feet, 210M/T respectively. The total quantity was 420M/T, not exceeding the maximum amout as required by the contract. Can Company H refuse to take delivery?

析:本题的解题要点:国际贸易中,一般对数量溢短装条款解释为不但总量受其约束,所列每种具体规格和数量也受约束。本案中卖家所交货物虽然总量符合要求,但每种规格与合同数量相差较大,这已构成违约。

答案: Yes, 买方有权拒收货物。

答题的切入点:数量溢短装条款的理解。

Chapter Five

Cargo Transportation

5

1. Background and Suggestions for Teaching and Learning

1.1 相关背景知识

国际货物运输是国际贸易中必不可少的一个环节,通常包括海洋、公路、铁路、航空和邮包等运输的方式。海洋运输是指使用船舶通过海上航道在不同国家和地区的港口之间运送货物的一种方式,国际海洋货物运输虽然存在速度较低、风险较大的不足,但是由于它的通过能力大、运量大、运费低,以及对货物适应性强等长处,加上全球特有的地理条件,使它成为国际贸易中主要的运输方式。20 世纪以来由于集装箱运输的兴起和发展,不仅使货物运输向集合化、合理化方向发展,而且节省了货物包装用料和运杂费,减少了货损货差,保证了运输质量,缩短了运输时间,从而降低了运输成本,大大促进了国际贸易的发展。

目前,国际贸易总运量中的 2/3 以上,中国进出口货运总量的约 90%都是利用海上运输的方式。随着我国经济的快速发展,我国已经成为世界上最重要的海运大国之一。全球目前有 19%的大宗海运货物运往我国,有 20%的集装箱运输来自我国;而新增的大宗货物海洋运输之中,有 60%至 70%是运往我国的。我国的港口货物吞吐量和集装箱吞吐量均已居世界第一位;世界集装箱吞吐量前 5 大港口中,我国占了 3 个。随着中国经济影响力的不断扩大,世界航运中心正在逐步从西方转移到东方,我国海运业已经进入世界海运竞争舞台的前列。

由于这些原因,海洋运输方式是本章的重点,其中又以班轮运输为重中之重,学习者在本章的学习中要了解海运的特点、运费的计算和海运提单的作用和应用。

1.2 教学目标与建议

完成本章的教学内容后,学生应掌握以下的内容:

- 海洋运输的种类、特点以及海运费的计算
- 空运、多式联运的特点以及运费的计算
- 海运提单的性质和作用、内容以及种类
- 其他运输单据的性质和作用
- 合同中装运条款的制定

这一章节是货物运输,主要介绍国际贸易中的运输方式、运输单据及装运条款。海洋运输以及有关的单据及其条款是本章的重点。本章节建议用 8~12 学时进行讲解。

1.3 知识结构图

- 国际货物运输
  - 运输方式
    - 海运
      - 班轮运输
      - 租船运输
    - 空运
    - 铁路运输
    - 公路运输
    - 联合运输
    - 集装箱运输
  - 运输单据
    - 海运提单
      - 提单的作用
      - 提单的内容
      - 提单的种类
    - 航空运单
    - 多式联运单据
    - 铁路运输单据(国际铁路联运运单 & 承运货物收据)邮政收据
  - 装运条款
    - 装船期和交货期
    - 装运港和目的港
    - 分批装运和转运
    - 装卸率/时间,滞期费和速遣费
      (仅适用于租船运输且由非租船方负责装卸货时)

2. Learning Points

2.1 班轮运输

班轮运输指按固定的航行时间表,在固定的航线上,以固定的港口顺序,并按事先公布的固定运价收取运费的海洋运输方式。班轮运输在进出口货物运输中具有以下三个特点:(1)货不论多少,只要舱位可以利用,均可受载,尤其适合托运量少的货物运输;(2)运

价内已包括装卸费用,承托双方不计算滞期费和速遣费;(3)承运人和托运人双方的权利及义务以签发的班轮提单背面条款为准。

2.2 班轮公司计收运费的标准和办法

班轮公司运输货物所收取的运送费用,是按照班轮运价表的规定计收的。不同的班轮公司或班轮公会各有不同的班轮运价表。班轮运价表一般包括货物分级表、各航线费率表,附加费率表、冷藏货及活牲畜费率表等。目前,我国海洋班轮运输公司使用的是"等级运价表",即将承运的货物分成若干等级,其中 1 级费率最低,20 级费率最高。

班轮运费包括基本运费和附加费两部分。前者是指货物从装运港到卸货港所应收取的基本运费,它是构成全程运费的主要部分;后者是指对一些需要特殊处理的货物,或由于突发事件或客观情况变化等原因而需另外加收的费用。在实际业务中,基本运费的计算标准以按货物的毛重("W")和按货物的体积("M")或按重量、体积选择("W/M")的方式为多。贵重物品较多的是按货物的 FOB 总值("A. V.")计收。

附加费是指除基本运费外,另外加收的各种费用。在班轮运输中常见的附加费有下列几种。超重、超长、超大附加费:由于货物单件重量、长度和体积超过一定限度而加收的一种附加费。直航附加费:如一批货达到规定的数量,托运人要求将一批货物直接运达非基本港口卸货,船公司为此加收的费用,称为直航附加费。选卸港附加费:对于选卸货物需要在积载方面给以特殊的安排,这就会增加一定手续和费用,因而会追加一定的费用,称为选卸港附加费。港口附加费:由于某些港口的情况比较复杂,装卸效率较低或港口收费较高等原因,船公司特此加收一定的费用,称为港口附加费。

2.3 国际多式联运

国际多式联运指在集装箱基础上,把海、陆、空等各种传统运输方式更有效地结合起来的一种国际间综合性的连贯运输方式。《联合国国际货物多式联运公约》,把它定义为:"国际多式联运是按照国际多式联运合同,以至少两种不同的运输方式,由国际多式联运经营人将货物从一国境内接受货物的地点运至另一国境内指定交付货物的地点。"采用国际多式联运方式,托运人只需办理一次委托,支付一笔费用;即可取得全程运输的单据一张,手续十分简便。目前,我国开办的国际多式联运线路有十余条,由我国内地或港口可到达欧、美、非洲的港口或内地城市。

2.4 FCL(Full Container Load)vs. LCL(Less Than Container Load)

FCL 即整箱货,凡一批货物的数量达到一个集装箱内容积的 75%以上或集装箱负荷重量的 95%,即可作为整箱装。整箱装的货由货方在工厂或仓库装箱,装箱后直接运到集装箱堆场,然后由承运人运至港口装上船。货到目的港后,集装箱卸下船后运至集装箱堆场,收货人可直接从集装箱堆场把货提走。

LCL,整箱货的相对用语,指装不满一整箱的小票货物。这种货物,通常是由承运人分别揽货并在集装箱货运站或内陆站集中,而后将两票或两票以上的货物拼装在一个集装箱内,同样要在目的地的集装箱货运站或内陆站拆箱分别交货。对于这种货物,承运人

要负担装箱与拆箱作业,装拆箱费用仍向货方收取。承运人对拼箱货的责任,基本上与传统杂货运输相同。

2.5 (海运)提单的定义、性质作用及相关的国际公约

提单是承运人或其代理人在收到货物后签发给托运人的一种文件,它体现了承运人与托运人之间的相互关系。

提单的性质作用体现在:1)提单是承运人或其代理人出具的货物收据,证实其已按提单的记载收到托运人的货物。2)提单是承运人和托运人双方订立的运输契约的证明,提单条款明确规定了承、托双方之间的权利与义务,责任与豁免,是处理承运人与托运人之间争议的法律依据。3)提单是代表货物所有权的凭证,提单的持有人拥有支配货物的权利。因此,凭提单可以提货,可以向银行议付货款,提单还可以转让或抵押。

关于统一提单的若干法律规则的国际公约主要有《海牙规则》、《维斯比规则》和《汉堡规则》。《海牙规则》是海上运输方面一个十分重要的公约,至今已有五十多个国家承认了它。几十年来许多国家的航运公司都在其所制发的提单上规定采用本规则,据以确定承运人在货物装船、收受、配载、承运、保管、照料和卸载过程中所应承担的责任与义务,以及其应享受的权利与豁免。《海牙规则》于一九二四年制订,实施半个多世纪以来,由于本身存在的和在实施过程中出现的各项问题,以及近年来国际经济、政治的变化和海运技术的发展,某些内容已经过时,多数国家特别是代表货方利益的国家和第三世界国家强烈要求修改本规则。目前,对《海牙规则》的修改存在两个方案:一个是代表英国及北欧各传统海运国家提出的《维斯比规则》,另一个是由联合国国际贸易法委员会所属国际航运立法工作组提出的代表第三世界和货方利益的《汉堡规则》,由于目前正处在新旧交替过程中,而这三个规则在实际的海运业务中,分别为有关国家及其船公司所采用,所以,我们对这三个规则都应该有所了解。

此外,2008 年 12 月 11 日,联合国大会第六十三届会议第六十七次全体会议审议通过了联合国国际贸易法委员会(UNCITRAL)提交的《联合国全程或部分海上国际货物运输合同公约》(*the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*),并定于 2009 年 9 月 23 日在荷兰鹿特丹举行签字仪式,将公约定名为《鹿特丹规则》。截至 2010 年 9 月 23 日,已有 23 个国家签署了《鹿特丹规则》,其中包括了包括丹麦、希腊、荷兰、挪威、美国、法国等航运和/或贸易发达国家。公约的生效条件为"第 20 份批准书、接受书、核准书或加入书交存之日起 1 年期满后的下一个月第一日"。如果公约生效并获得主要航运国家的认可,则预示着调整国际海上货物运输的国际立法将结束"海牙规则时代",开启一个新的"鹿特丹规则时代"。所以,我们对《鹿特丹规则》也应该关注并有所了解。

2.6 记名提单、空白提单 vs. 指示提单

1) 记名提单(Straight B/L)

记名提单又称收货人抬头提单,是指提单上的收货人栏中已具体填写收货人名称的提单。提单所记载的货物只能由提单上特定的收货人提取,或者说承运人在卸货港只能

把货物交给提单上所指定的收货人。这种提单失去了代表货物可转让流通的便利,但同时也可以避免在转让过程中可能带来的风险。使用记名提单,如果货物的交付不涉及贸易合同下的义务,则可不通过银行而由托运人将其邮寄收货人,或由船长随船带交。这样,提单就可以及时送达收货人,而不致延误。因此,记名提单一般只适用于运输展览品或贵重物品,特别是短途运输中使用较有优势,而在国际贸易中较少使用。

2) 指示提单(Order B/L)

在提单正面"收货人"一栏内填上"凭指示"(To order)或"凭某人指示"(Order of...)字样的提单。如果在收货人栏内只填记"指示"字样,则称为托运人指示提单。这种提单在托运人未指定收货人或受让人之前,货物所有权仍属于卖方,在跟单信用证支付方式下,托运人就是以议付银行或收货人为受让人,通过转让提单而取得议付货款的。如果收货人栏内填记"某某指示",则称为记名指示提单,如果在收货人栏内填记"某某或指示",则称为选择指示人提单。记名指示提单或选择指示人提单中指名的"某某"既可以是银行的名称,也可以是托运人。

指示提单是一种可转让提单。提单的持有人可以通过背书的方式把它转让给第三者,而不须经过承运人认可,所以这种提单为买方所欢迎。而不记名指示(托运人指示)提单与记名指示提单不同,它没有经提单指定的人背书才能转让的限制,所以其流通性更大。指示提单在国际海运业务中使用较广泛。

3) 不记名提单(Bearer B/L, Open B/L or Blank B/L)

提单上收货人一栏内没有指明任何收货人,而注明"提单持有人"(Bearer)字样或将这一栏空白,不填写任何人的名称的提单。这种提单不需要任何背书手续即可转让,或提取货物,极为简便。承运人应将货物交给提单持有人,谁持有提单,谁就可以提货,承运人交付货物只凭单,不凭人。这种提单丢失或被窃,风险极大,若转入善意的第三者手中时,极易引起纠纷,故国际上较少使用这种提单。另外,根据有些班轮公会的规定,凡使用不记名提单。在给大副的提单副本中必须注明卸货港通知人的名称和地址。

2.7 装运期 vs. 交货期

交货(delivery)是指卖方按照同买方约定的时间、地点和运输方式将合同规定的货物交付给买方或其代理人。装运(shipment)一般是指将货物装上运输工具,它与交货是两个不同的概念。在国际贸易中,象征性交货的合同下(如 F. O. B. 、C. F. R. 和 C. I. F.),卖方只要根据合同的有关规定将货物装上船,取得提单,就算交货,装运期和交货期是一致的。但这一情况不适用于实际交货的合同。实际交货是指货物运抵目的地,因而,装运时间与交货时间是并不一致的。装运发生在出口港(地),而交货发生在进口港(地),在买卖合同中,合理地规定装运期(交货期)是很重要的。

2.8 装卸时间、装卸率和滞期、速遣条款

1) 装卸时间:装卸时间(lay time)是指允许完成装卸任务所约定的时间,它一般以天数或小时数来表示。

2) 装卸率: 所谓装卸率,即指每日装卸货物的数量。装卸率的高低,关系到完成装

卸任务的时间和运费水平,装卸率规定过高或过低都不合适。规定过高,完不成装卸任务,要承担滞期费(demurrage)的损失;反之,虽能提前完成装卸任务,可得到船方的速遣费(dispatch money),但船方会因装卸率低,船舶在地时间长而增加运费,致使租船人得不偿失。

3)滞期费和速遣费:如果在约定的允许装卸时间内未能将货物装卸完,致使船舶在港内停泊时间延长,给船方造成经济损失,则延迟期间的损失,应按约定每天若干金额补偿给船方,这项补偿金叫滞期费。反之,如按约定的装卸时间和装卸率,提前完装卸任务。使船方节省了船舶在港的费用开支,船方将其获取的利益的一部分给租船人作为奖励,叫速谴费。按惯例,速遣费一般为滞期费的一半。滞期费和速遣费通常约定为每天若干金额,不足一天,按比例计算。

2.9 语言点

1)表示装运/装船或交货的语言表达

在国际货物贸易中,"deliver"和"ship"及其名词"delivery"、"shipment"和名词短语"make delivery"、"make shipment",常用来表示"交货"。如:

As the latest shipment date stipulated in the L/C is 31st July and cannot be further extended, the goods must be delivered/shipped not later than the above date.(由于信用证规定的最后船期是七月三十一日,不可展期,所以货物必须在上述日期前交货/装运。)

Commodity A can be supplied for immediate delivery, while Commodity B are only available for delivery 45 days after receipt of the L/C.(商品 A 即期可供而商品 B 要在收到信用证后 45 日内交货。)

值得注意的是:对于装运合同,如常用的 FOB 合同、CFR 合同和 CIF 合同,因其船期就是交货期,所以 deliver/delivery 和 ship/shipment 可以互用。但对于到达合同,船期和交货期是两个完全不同的概念,如用 D 字开头的术语的合同,这时候,deliver/delivery 和 ship/shipment 分别是"交货"和"装船"两个截然不同的概念,不可以混淆。

2)合同中转船条款的语言组织

合同中的转船条款通常只有两种,一种是允许转船,另外一种就是不允许转船。在允许转船的情况下,有时会对转船港口作出限制。

允许转船或不允许转船:相应的英文是 with transshipment allowed/prohibited

转船港口,一般用介词 at 引出:如 transshipment at Hong Kong

例: Shipment:during October 2015 with transshipment prohibited

Shipment:during October 2015 with transshipment at Hong Kong allowed

3)合同中分批装运条款的语言组织

合同中的分批装运条款通常包括三部分,批次、每批次的具体时间及具体数量。如:

Shipment:to be effected within January, February and March of 2015 in three equal monthly lots

(装运:分三批,2015 年一、二、三月每月一批,每批等量)

Shipment:to be effected within January, February and March of 2015 in three lots, 500

metric tons for each month(装运:分三批,2015 年一、二、三月每月 500 公吨)

注意:分批装运条款要具体清晰, 避免含糊不清。如:

Shipment:to be effected within January, February and March of 2015 in three lots (装运:分三批,2015 年一、二、三月发运)

Shipment:to be effected within January, February and March of 2015 in three equal lots (装运:分三批,2015 年一、二、三月,每批等量)

Shipment:to be effected within January, February and March of 2015 in three monthly lots (装运:分三批,2015 年一、二、三月每月一批)

由于上述条款对每批次的具体时间或具体数量规定不够明确,容易导致争执,除非买卖双方真有此意,否则应避免类似不明确的条款。

3. Solutions to Exercises

I. Multiple choices.

1. In international cargo transportation, the most widely adopted bill of lading is _____.

A. straight bill of lading　　B. unclean bill of lading

C. bearer bill of lading　　D. order bill of lading

解: 指示提单是指提单的收货人栏填写"凭指定"(To Order)和或"凭某某人指定"(To Order of ×××)字样。这种提单可经过背书转让,故其在国际贸易中广为使用。记名提单是指提单的收货人栏填明特定收货人名称, 只能由该特定收货人提货。这种提单不能通过背书转让,不能流通, 故其在国际贸易中很少使用。不记名提单是指提单的收货人栏没有注明任何收货人名称,只注明提单持有人字样,承运人把货交给提单持有人。不记名提单无须背书转让,流通性极强,但风险很大, 故在国际贸易中很少使用。而不洁提单是指承运人在签发的提单上带有明确注明货物及/或包装有缺陷状况的条款或批注的提单。不洁提单一般不为买家所接受,故在国际贸易中很少使用。故答案为 D。

2. A bill of lading which allows the holder of the B/L to release the cargo regardless of his identity is a(n) _____ B/L.

A. open　　B. straight　　C. clean　　D. order

解: 提单上收货人一栏内没有指明任何收货人,而注明"提单持有人"(Bearer)字样或将这一栏空白,不填写任何人的名称的提单被称为空白提单。这种提单不需要任何背书手续即可转让或提取货物,极为简便。承运人应将货物交给提单持有人,谁持有提单,谁就可以提货,承运人交付货物只凭单,不凭人。故答案为 A。

3. A bill of lading is _____ when its date of shipment is indicated earlier than the actual time of shipment.

A. stale B/L　　B. confirmed B/L

C. ante-dated B/L　　D. straight B/L

解：在货物装运中，如果货物实际装船完毕日期迟于信用证规定的装运日期，为了使签发提单日期与信用证规定的装运日期相吻合，以便结汇，承运人应托运人的要求，在提单上仍按信用证规定的装运日期签发，这种提单称为“倒签提单”。故答案为 C。

4. A（An）_____ represents title to the cargo.

A. CTD　　B. air waybill　　C. road waybill　　D. bill of lading

解：在所有的运输单据中，只有提单是货物所有权的凭证。提单在法律上具有物权证书的作用，货物抵达目的港后，承运人应向提单的合法持有人交付货物。故答案为 D。

5. In the import and export business, _____ can be made out to negotiable document.

A. rail waybill　　B. ocean B/L

C. air waybill　　D. parcel post receipt

解：在所有的运输单据中，只有海运提单是货物所有权的凭证。提单在法律上具有物权证书的作用，货物抵达目的港后，承运人应向提单的合法持有人交付货物，提单可以通过背书转让，从而实现转让货物的所有权。故答案为 B。

6. The bill of lading presented to the consignee or buyer or his bank after the stipulated expiry date of presentation or after the goods are due at the port of destination is a _____.

A. stale B/L　　B. confirmed B/L

C. ante-dated B/L　　D. straight B/L.

解：过期提单是指错过规定的交单期或晚于货物到达目的港日期的提单。故答案为 A。

7. A “freight to be collected” B/L is acceptable to the buyer when the contract is based on _____.

A. FOB　　B. CFR　　C. CIF　　D. CPT

解：根据 Incoterms 2010，只有在 FOB 合同中卖方不需要负责运输合同并承担主要运输费。故答案为 A。

8. Which of the following description does NOT indicate partial shipment?

A. Goods under one contract are shipped by two different vessels.

B. Goods under one contract are unloaded at different ports of destination.

C. Goods under one contract are loaded from different ports onto the same vessel for the same destination on the same trip.

D. Shipment to be made in April, May and June, in three monthly lots.

解：UCP600 第三十一条：b. 表明使用同一运输工具并经由同次航程运输的数套运输单据在同一次提交时，只要显示相同目的地，将不视为部分发运，即使运输单据上表明的发运日期不同或装货港、接管地或发运地点不同。故答案为 C。

9. An order B/L with blank endorsement is a B/L showing _____.

A. neither the name of consignee nor the name of transferor

B. neither the name of consignee nor the name of transferee

C. both the name of consignee and the name of transferor

D. both the name of consignee and the name of transferee

解：指示提单是指提单的收货人栏填写“凭指定”(To Order)和/或“凭某某人指定”(To Order of ×××)字样。这种提单可经过背书转让,背书的方式有“空白背书(Blank Endorsement)”和“记名背书”。其中的“空白背书”是指背书人(提单转让人)在提单背面签名,而不注明被背书人(提单受让人)名称。故答案为 B。

10. A (n)_____ B/L refers to one that is made out to a designated consignee.

A. straight B. order C. specific order D. bearer

解：记名提单是指提单的收货人栏填明特定收货人名称，只能由该特定收货人提货。故答案为 A。

II. True or false statements.

1. __T__ Liner freight has covered the loading and unloading fee.

解：班轮运输的其中一个特点是:由船方负责配载装卸,装卸费包括在运费中，货方不再另付装卸费，船货双方也不计算滞期费和速遣费。

2. __F__ When the ship owner speeds up his ship and arrives at the destination at an earlier date than stipulated, he can obtain dispatch money from the charterer.

解：速遣费是指在规定的装卸期限内,租船人提前完成装卸作业,使船方节省了船舶在港的费用开支,船方向租船人就节省的时间支付的一定的奖金。故说法不正确。

3. __T__ When the charterer fails to load or unload the goods within the stipulated period of time, he has to pay demurrage to the ship owner.

解：滞期费是指在规定的装卸期限内,租船人未能按时完成装卸作业,给船方造成一定的经济损失,租船人对超过的时间向船方支付的一定的罚金。

4. __F__ Ocean Bill of Lading, air waybill and rail waybill are property documents presenting title to cargoes, so they are all negotiable.

解：在所有的运输单据中,只有海运提单是货物所有权的凭证。空运单和铁路运单并不具备货物所有权的凭证的功能。故说法不正确。

5. __F__ In a DAP contract, “time of shipment” can be used interchangeably with “time of delivery”.

解：DAP 是属于到达合同的性质。在按 DAP 术语成交时,卖方承担货物运至目的地的所有费用和风险,即在目的地点卖方履行其交货义务。所以,装船期和交货期是两个完全不同的概念,不可混淆。

6. __F__ Since straight B/L bears higher risk than the open B/L, it is rarely used in international transportation.

解：记名提单是指提单的收货人栏填明特定收货人名称,只能由该特定收货人提货。这种提单不能通过背书转让,不能流通,故其在国际贸易中很少使用。不记名提单的情况下,承运人把货交给提单持有人。不记名提单无须背书转让,因此,与记名提单相比,不记名提单的风险更大,故说法不正确。

7. __F__ A clean B/L is issued by the seller to the buyer to certify that the goods delivered are in apparent good condition.

解：清洁提单是指货物在装船时“表面状况良好”，承运人在签发的提单上不带有明确宣称货物及/或包装有缺陷状况的条款文字或批注的提单。提单是由承运人而不是卖方签发的，故说法不正确。

8. __F__ In international trade practice, time of shipment is actually the time of delivery.

解：F 和 C 字母开头的术语的合同属装运合同，卖方都是在启运港履行其交货义务，因此装运的时间就是交货时间。但采用 E 和 D 字母为开头的术语的合同是属于到达合同的性质，卖方承担货物运至目的地的所有费用和风险，即在目的地点卖方履行其交货义务。所以，装船期和交货期是两个完全不同的概念。

9. __T__ Sometimes when the buyer cannot determine a specific port of discharge during negotiation, he may require two or three ports to be written on the contract as optional ports.

解：在买卖合同中，装运港和目的港一般情况下分别规定各为一个。但在磋商交易时，如明确规定装运港或目的港有困难，可采用选择港的办法，规定两个或两个以上港口，然后从中选一个。

10. __F__ A bill of lading is an order B/L when it states a particular party as the consignee.

解：提单的收货人一栏填明特定收货人名称，是记名提单，只能由该特定收货人提货。而指示提单是指提单的收货人一栏填写“凭指定”(To Order)和或“凭某某人指定”(To Order of ×××)字样，并非指定收货人。

III. Calculation.

1. The price quoted by an exporter was “USD38 per case FOB Shanghai”. The importer requested a revised CFR Liverpool price. If the size of each case was 50cm×40cm×30cm, gross weight per case was 40kg, freight basis was W/M and the quotation for Liverpool is USD100 per ton of carriage, plus 20% bunker adjustment factor (BAF) and 10% currency adjustment factor (CAF), what would be the CFR price?

解：W = 40kg = 0.04m/t

$M = 50cm \times 40cm \times 30cm = 0.5m \times 0.4m \times 0.3m = 0.06m^3$

M>W, M will be used as freight basis for freight calculation

Freight per case = Basic freight rate×M×(1+BAF rate+CAF rate)

= 100×0.06×(1+20%+10%) = USD7.8

CFR = FOB + Freight = 38 + 7.8 = USD45.80

Answer: The CFR price would be USD45.80 per case CFR Liverpool.

2. There is one consignment of 10 cartons of leather shoes. Measurement of each carton is 50cm×50cm×50cm, gross weight of each carton is 15kg. The air freight rate quoted for the flight required is USD1.3/kg. How much air freight should be paid to the carrier?

解：W = 15kg

$$M=\frac{50cm\times50cm\times50cm}{6,000cm^3}=20.83kg$$

M > W, so M is used as the calculation basis.

Freight = USD1.3/kg×20.83×10 cartons = USD270.79

Answer: The air freight is USD270.79.

3. Company A is to ship their Artware to Turkey and the total quantity is 80 cartons (total weight: 4,500kg; total measurement: 3cbm). The ocean freight rate is: USD45/freight ton, LCL from Guangzhou, China to Istanbul, Turkey. How much is the total LCL freight?

解: W = 4,500 kg = 4.5 MT

M = 3 cbm

W>M, so W is used as calculation basis.

LCL Freight = Unit Freight × Quantity

= 45 × 4.5

= USD202.50

Answer: The LCL freight is USD202.50.

4. Company B is to export their goods by three 1×20′ FCL Containers from Guangzhou, China to Felixstow, UK. The quotation for FCL ocean freight rate is as follows:

O/F (Ocean freight) rate: USD750.00/20′;

BAF: USD500.00/20′;

CAF: 12% of the basic freight

ISPS (International ship and port facility security) USD10.00/20′

How much is the total freight?

解: Total freight = [O/F × (1+CAF)+BAF+ISPS]×Quantity

= [750×(1+12%)+500+10]×3

= 1,350×3

= USD4,050.00

Answer: The total freight would be USD4,050.00.

5. Company C is to deliver one consignment of Electronic products to Hamburg, Germany. There are a total of 30 cartons (carton size: 50cm × 65cm × 55cm) weighing 660kg, gross. The air freight rate quoted for the flight from Shenzhen to Germany is as below:

A/F: CNY10.00/kg

Fuel surcharges: CNY3.50/kg,

Security surcharges: CNY1.20/kg,

Terminal charges CNY0.50/kg.

How much air freight should be paid to the carrier?

解:

W = 660 kg

M = (50cm×65cm×55cm)/6,000cm^3× 30 cartons = 29.79 × 30 = 894kg

M > W, so M is used as the calculation basis.

Freight = Unit Freight × Quantity
= (A/F+ Fuel +Security +Terminal) × Quantity
= (10 + 3.5 +1.2 + 0.5) × 894kg
= CNY15.2 × 894kg
= CNY13,588.80

Answer: The air freight is CNY13,588.80

IV. Explain the following terms.

1. liner service

答: Liner service provides regular sailings and arrivals and sails on a fixed (regular) sailing route and calls at fixed (regular) base ports with a comparatively fixed timetable and charges at comparatively fixed freight rates. Normally, the freight of liner service is made up of two parts. One is the basic freight; the other is the surcharges and additionals.

2. FIO

答: FIO is the initial or abbreviations for "Free In and Out". "Free In and Out" is one of the four methods usually used to divide the expenses of loading and unloading between the shipowner and the charterer in a charter party. Under F. I. O., the ship-owner does not bear any loading and unloading cost.

3. demurrage

答: Demurrage is the amount of money paid as a penalty at an agreed rate by the charterer to compensate the ship-owner for his losses in case the charterer fails to have loading and unloading completed within the lay time. In a sales contract, demurrage is paid to the charterer (buyer or seller) by the other party (seller or buyer) in case the loading or unloading completes beyond the stipulated lay time.

4. dispatch money

答: Dispatch is the amount of money paid as a bonus by the ship-owner to the charterer if they get loading and unloading done ahead of schedule. Normally dispatch money is half the demurrage as the benefit from the expedite loading or unloading is supposed to be shared by both the ship-owner and the charterer. In the case of a sales contract, dispatch is paid by the charterer(buyer or seller) to the other party (seller or buyer) in case the loading or unloading completes ahead of the stipulated lay time.

5. containerization

答: Containerization is a method of distributing merchandise in a unitized form adopting

an inter-modal system which provides a possible combination of sea, road and other modes of transportation. For the sake of containerization, containers, as a very special form of transportation, are widely used in different modes of transportation.

6. FCL

答： FCL, a short for Full Container Load, is one type of the two container transportation services. If the goods are of a container load, FCL service shall be adopted. Under FCL service, the freight is calculated based on container capacity and the origin and destination of the goods, not on the quantity of the goods involved as in the case of LCL, the other type of the container transportation service.

7. time of delivery

答： Time of delivery refers to the time limit during which the seller shall deliver the goods to the buyer at the agreed place. For all shipment contracts, time of shipment is time of delivery and they can be used interchangeably in the contract. For all arrival contracts, time of shipment and time of delivery are two completely different concepts and time of delivery should be stipulated in the contract.

8. optional ports

答： Optional ports refer to two or more ports of destination rather than a definite one. They are specified in the contract. The seller may accept two or more optional ports to meet the buyer's special requirements, when a buyer can not, at the time of contracting, make the decision as to which market should the goods be delivered to.

V. Short questions.

1. Under what circumstances does time of shipment equal to the time of delivery?

答： Time of shipment refers to the time limit for loading the goods on board the vessel at the port of shipment while time of delivery refers to the time limit during which the seller shall deliver the goods to the buyer at the agreed place.

For all shipment contracts, time of shipment equals to time of delivery and they can be used interchangeably in the contract. According to Incoterms 2010, contracts concluded on the basis of terms like FOB, CFR, CIF, FCA, CPT, CIP are shipment contracts. Under the shipment contract, the seller fulfills his obligation of delivery when the goods are shipped on board the vessel or delivered to the carrier and the seller only bears all risks prior to shipment.

2. What are the functions of a bill of lading?

答： A bill of lading has three major functions: First, it is a cargo receipt. Second, it is evidence of a contract of carriage. Finally, it is a document of title to the goods.

3. What are the main types of bills of lading?

答： Bills of lading can be classified into various forms according to different standards.

- According to whether the goods have been loaded on board the carrying vessel, bills of lading can be classified into shipped (or on board) B/L and received for shipment (or

received) B/L.

- According to the apparent condition of the received cargo, bills of lading can be classified into clean B/L and unclean B/L.
- According to the different ways of designating the consignee, bills of lading can be divided into straight B/L, order B/L and open B/L.
- According to whether transshipment is involved in transit, bills of lading can be classified into direct B/L and transshipment B/L.
- According to the perplexity or simplicity of the bill content, bills of lading can be classified into long form B/L and short form B/L.
- According to the payment condition of freight, bills of lading can be classified into freight prepaid B/L and freight to be collected B/L.
- According to the validity, bills of lading are classified into original B/L and copy B/L.
- Other forms of bill of lading also exist according to different circumstances. They are stale B/L, ante-dated B/L, advance B/L and on-deck B/L.

4. What are the ways of dividing charges of loading and unloading in a charter party?

答: Four methods are usually used to divide the expenses of loading and unloading between the ship-owner and the charterer:

- Liner Terms/Gross Terms or In and Out (I & O): The ship-owner bears loading and unloading cost.
- Free In (FI): The ship-owner is only responsible for unloading cost.
- Free Out (FO): The ship-owner is only responsible for loading cost.
- Free In and Out (FIO): The ship-owner does not bear loading and unloading cost. Or FIOST (free in and out, stowed and trimmed): The ship-owner does not bear loading and unloading cost, not even bear the expenses of stowing and trimming.

5. What factors are to be considered in stipulating the clause of delivery in a contract?

答: The shipment clause in a sales contract usually includes stipulations concerning time of delivery (time of shipment), port (place) of shipment and port (place) of destination, partial shipments, transshipment, or lay days, demurrage and dispatch money.

VI. Case studies.

1. ABC co. signed a contract to export 200 M/T of beans. The letter of credit stipulated, "Partial shipment not allowed". When the shipment was being made, the exporter loaded 100 M/T each on board the same vessel for the same voyage at the port of Shanghai and the port of Dalian. The shipment document was clearly marked with the ports of shipment and the dates of shipment. Did the exporter violate the terms of the L/C?

析: 本题的解题要点:UCP600 第三十一条:b. 表明使用同一运输工具并经由同次航程运输的数套运输单据在同一次提交时,只要显示相同目的地,将不视为部分发运,即使运输单据上表明的发运日期不同或装货港、接管地或发运地点不同。案例虽然没有说明

货物是否在同一目的港卸货,但如果没有强调说明,一般认为是同一个目的地。

答案:No。卖方没有违反信用证"不允许分批装船"的规定。

答题切入点:对分批装船的定义和相关规定的理解。

2. A trading company B in China concluded a contract to export 600 M/T Tea to a British company C and the contract stated: "Shipment is to be effected from April to June with partial shipment allowed: April shipment 100 M/T, May shipment 200 M/T, June shipment 300 M/T". In April, Company B delivered 100 M/T and got the payment smoothly. In May, the company was unable to deliver the goods. In June, 500 M/T shipment was effected. Could the exporter settle the payment smoothly for the delivery in June?

析:根据 UCP 600 第 32 条:信用证规定在指定的时间段内分期支款或分期发运。任何一期如未按信用证规定期限支取或发运时,信用证对该期及以后各期均告失效。本案中出口商在 5 月未能安排发货,已视为违约,即使在 6 月完成全部交货数量,买家或其银行也有权拒收货物,不可能顺利结汇。

答案:出口商 6 月份出运的货物不能顺利结汇。

答题切入点:对 UCP600 关于分批发运及分批付款的规定的理解。

3. Company E in the mainland of China reached an FOB contract with Company F in China's Hong Kong, exporting Steel Sheets. To resell the goods, Company F signed another CFR contract with Company G in South Korea. Later, Company E received the relevant L/C for the transaction from Company F. The price showed in the L/C was FOB as contracted. The L/C also stipulated that Busan (in South Korea) should be the port of destination. What's more, the L/C stipulated that the B/L should be marked with "Freight Prepaid".

(1) Why did Company F have such requests?

(2) Should Company E accept these L/C clauses?

析:本题的关键是① 理解中国香港公司作为中间商是要把从 E 公司购买的钢板转卖给韩国的 G 公司。为免周折,中间商往往会安排货物直接从出口装运港运往韩国 G 公司所指定的目的港(地)。② FOB 合同下,卖方虽然既无义务租船订舱,也无须承担出货物自出口装运港之后的一切运输费,但通常会接受买家的委托安排货物运往买家指定的目的港(地),只是"运费到付",即由承运人向目的港(地)的收货人收取。

(1) 答案:因为港商为了简化向韩商的交货手续,或者是企图将运费转嫁给出口商。

答题的切入点:FOB 和 CFR 术语下出口货物运输义务以及主运费的买方和卖方之间划分。

(2) 答案:可以,只要运至釜山的运费由中国香港公司承担。具体做法可由 FOB 合同下的卖方 E 公司和买家 G 公司磋商决定,如可采取 a. 中国香港公司先将运费汇交 E 公司;或者 b. 由中国香港公司先将运费交付船公司,经从船公司得到确认后 E 公司可照办;或者 c. 要求修改信用证,加入允许收益人超支运费条款。

答题的切入点:在 FOB 合同下,货物自在出口装运港之后的运费由买方承担。

Chapter Six

Cargo Transportation Insurance

1. Background and Suggestions for Teaching and Learning

1.1 相关背景知识

国际贸易中90%以上的货物都是通过海上进行运输,由于海上的风险比较大,保险就变得异常重要,因此早期的保险立法活动都是围绕海上保险进行的,商人们为了有效地规避风险以使贸易得到顺利开展,形成了一系列海上保险的做法和行为准则。11世纪末,在意大利北部已出现了类似现代形式的海上保险。15世纪,伦巴第商人开始使用保险单。而随着新航路的开辟,海上保险迅速发展,随之有关的保险纠纷越来越多,这使得有关国家都感到有必要制订相关法令。1468年威尼斯制定的关于法院如何保证保单实施和防止欺诈的法令,以及1523年佛罗伦萨在总结以往经验的基础上规范的海上保险做法,是早期较完善的保险条例和标准保单格式,保险业的立法也由此获得发展。

英国《1906年海上保险法》是一部对很多国家的海上保险立法都有重要影响的法律,被世界各国视为海上保险法的范本。目前世界上有船舶保险和货物运输保险的国家中几乎有2/3的保单内容,采用英国保险条款,或者是既采用英国保险法的规定,又采用保险单条款。还有一些过去属于英联邦的国家把《1906年海上保险法》作为海上保险合同的基本法规,甚至把该英国立法不加以任何改变地列入本国法规中,如印度、澳大利亚、肯尼亚等国。有的国家虽然没有正式把英国立法列入本国立法中,但是其地方的司法惯例也是以英国立法作依据。

在我国,进出口货物运输最常用的保险条款是CIC中国保险条款,该条款是由中国人民财产保险股份有限公司根据英国的协会保险条款制订,由中国人民银行及中国保险

监督委员会审批颁布。CIC 保险条款按运输方式来分,有海洋、陆上、航空和邮包运输保险条款四大类,海洋货运保险的承保范围主要包括被保险货物在运输途中由于自然灾害、意外事故等造成的货物灭失或损坏,可以扩展至内陆运输、货仓风险,以及战争、罢工、暴乱、内乱(恐怖袭击)、偷盗、劫持、短卸及提货不着等。海洋运输保险主要分为三大基本险别:平安险(FPA)、水渍险(WPA)和一切险(AR)。如果客户要求使用英国协会条款(INSTITUTE CARGO CLAUSE,简称 ICC 条款),国内也可以接受。

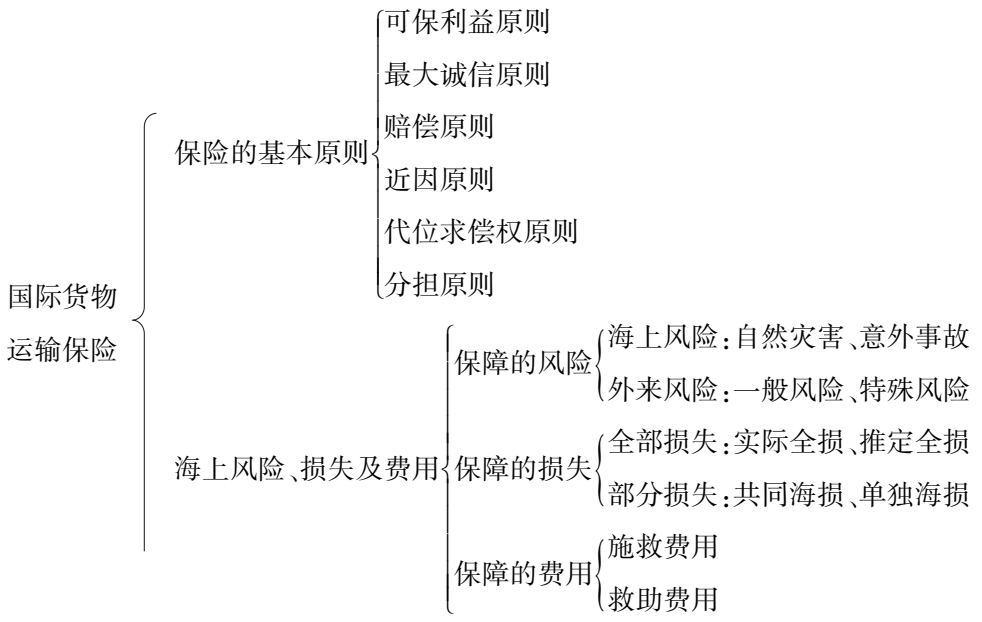
1.2 教学目标及建议

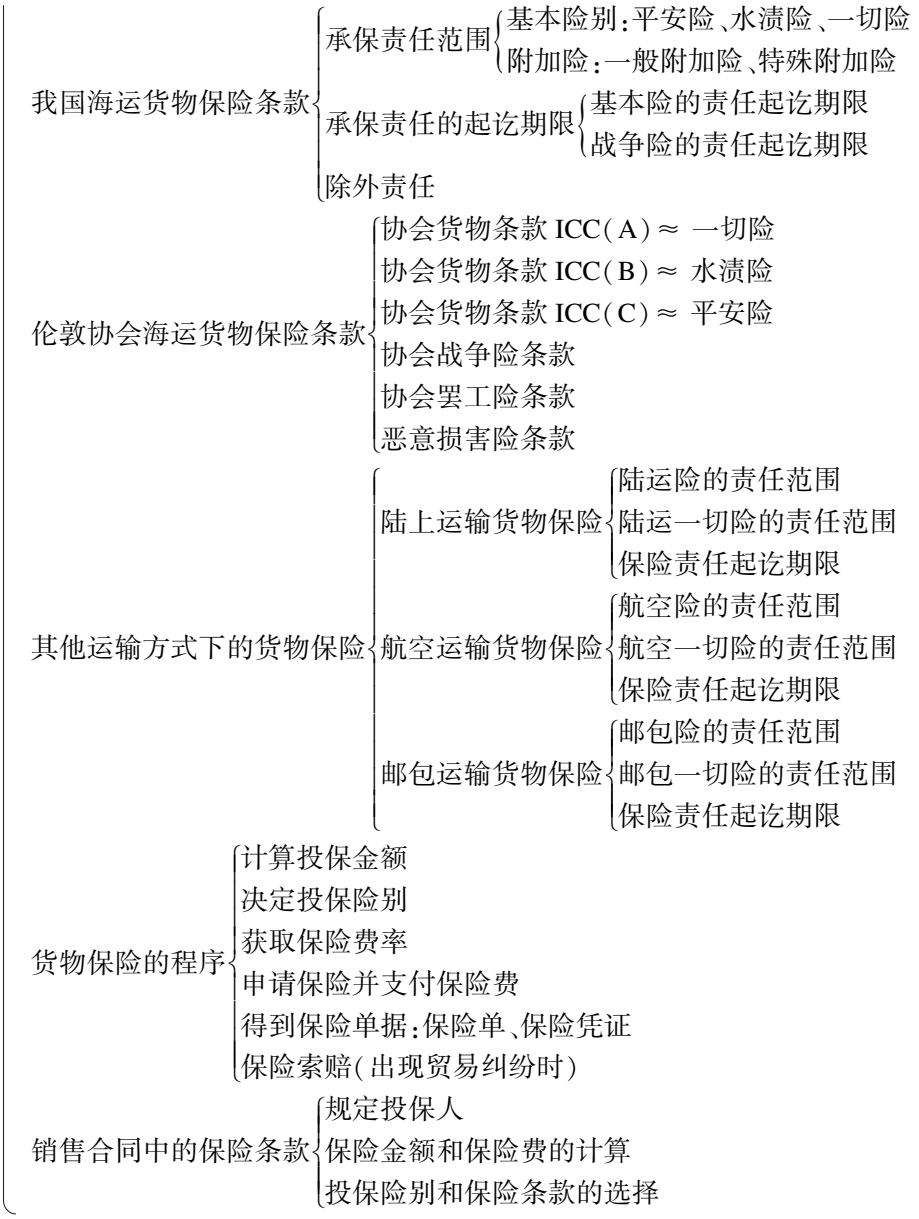
完成本章的教学内容后,学生应掌握以下的内容:

- 货物运输保险的基本原则
- 海上货物运输的风险、损失和费用
- 中国保险条款的主要内容
- 伦敦协会货物保险条款的主要内容
- 货物运输保险的程序
- 销售合同中保险条款的制定

这一章节是货物运输保险,主要介绍货物运输保险的基本原则、承保的风险和损失、保险的主要险别以及货运保险的程序等。其中,海上货物运输保险是本章的重点。建议安排 4-6 个学时进行讲解。

1.3 知识结构图





2. Learning Points

2.1 可保利益原则(The Insurable Interest Principle)

可保利益原则要求投保人必须对保险对象(也就是保险标的)具有利益,而且这种利益必须是法律上承认的,可以实现的。根据《保险法》,投保人在为其货物进行投保的时候,应向保险人出具证明,证明其对所保货物具有可保利益。否则,投保人不具有可保利益,因而不具有投保人资格,就不能与保险公司订立保险合同。但由于货物的可保利益在

货物运输途中会发生转移,即从卖方转移给买方,在这种情况下,如果买方想于可保利益转移之前购买保险,以及时防范风险就成为不可能。例如在 CFR 项下,买方是主要风险的承受者,可保利益的转移是风险的转移点,即货物装上船。如果买方要等到风险转移之后再去投保,货物装船过程中的风险势必不能通过保险得以降低。但如果他想提前投保,又由于没有可保利益而无法投保。为解决这一矛盾,在保险实务中,通常买方在投保时只需出具他将来会对货物有可保利益的证明就可投保,如凭买方出具的装船通知书(shipping advice);但是,如果货物遭受损失,买方向保险公司进行索赔时,买方必须出具他在货物受损时对货物有可保利益的证明,否则保险公司不予理赔。

2.2 代位求偿权原则(The Subrogation Principle)

在货物保险中,如保险事故的发生是由第三者造成并负有赔偿责任,则投保人可以根据法律的有关规定向第三者要求赔偿损失,也可以根据保险合同要求向保险人支付赔款。如果投保人首先要求保险人给予赔偿,则保险人在支付赔款以后,有权在保险赔偿的范围内向第三者追偿,而投保人应把向第三者要求赔偿的权利转让给保险人,并协助其向第三者要求赔偿。反之,如果投保人首先向第三者请求赔偿并获得损失赔偿,被保险人就不能再向保险人索赔。

进行“代位求偿”有三个前提:1)第三方对于保险标的所造成的损失必须符合保险合同规定的保险责任范围;2)保险责任的形成必须是由第三方所造成的;3)保险人必须首先向被保险人履行赔偿责任。保险人在行使代位求偿权利的过程中所获得的超出其向投保人履行赔偿责任的金额必须返还给被保险人,即保险人不能运用代位求偿权利而获得超出其所承担的实际赔偿责任的利益。

2.3 保险费的计算

保险费(insurance premium)指投保人为取得保险保障,按合同约定向保险人支付的费用,投保人按约定方式缴纳保险费是保险合同生效的条件。保险费率(premium rate)是由保险公司根据一定时期、不同种类的货物的赔付率,按不同险别和目的地确定的。保险费的计算公式是:保险费=保险金额×保险费率。保险费计算要注意以下两点:

1)保险金额应该是含保险费的金额,如 CIF 或 CIP 合同的发票金额

2)在货物运输保险中,通常会允许加成进行投保。所谓“投保加成”(英文是 markup),即被保险人一般把货值、运费、保险费以及转售该笔货物的预期利润和其他费用的总和,作为保险金额,即习惯上按 CIF 总值的 110%保,超出的 10%为投保加成。如按 CIF 或 CIP 价加成投保,则上述公式应改为:保险费=CIF(或 CIP)价×(1+投保加成率)×保险费率

英文公式为:

$$\begin{aligned}\text{Insurance Premium (I)} &= \text{insurance amount} \times \text{premium rate (R)} \\ &= \text{CIF(CIP)} \times (1 + \text{markup rate}) \times \text{premium rate (R)}\end{aligned}$$

2.4 共同海损和单独海损的区别

共同海损和单独海损都是部分损失,它们的区别有两点:

1)造成海损的原因有别。单独海损是承保风险所直接导致的船货损失。共同海损不是承保风险所直接导致的损失,而是指载货的船舶在海上遇到灾害或者意外事故,威胁到船货各方的共同安全,为解除这种危险,维护船货安全,或使航程得以继续,船方有意识地、合理地采取措施,所作出的某些特殊牺牲或支出的某些额外的费用。构成共同海损必须具备以下条件:共同海损的危险必须是实际存在的,或者是不可避免的,而不是主观臆测的;必须是为船货共同安全而自主有意采取的合理措施;必须属于非常性质的损失,不是由于海上风险直接导致的;采取的措施必须是有效的。

2)两者承担的责任有别。单独海损是由受损方自行承担;而共同海损则由各受益方按受益大小的比例共同分摊。

2.5 共同海损分摊的计算

在公元前916年罗地安海商法中规定:"为了全体利益,减轻船只载重而抛弃船上货物,其损失由全体受益方来分摊。"在罗马法典中也提到共同海损必须在船舶获救的情况下,才能进行损失分摊。共同海损的分摊的计算比较复杂,通常要有四个步骤:

1)Total GA loss:计算共同海损导致的特殊牺牲和额外费用的总额

2)Total GA contributory value:计算共同海损受益的分摊总值,即各方从共同海损中受益的部分的总和,分为两个部分;其一是各方财产由于共同海损的措施而受益的部分,其二是共同海损的特殊牺牲的总额(不包括额外费用)。为什么这部分也要算是受益分摊的值呢?因为这部分的损失是最后由受益各方分摊的,也就是说为共同利益而受损的这部分利益共同海损方其实是没有失去的,它通过共同海损的分摊的形式又补偿给受损方的,因此也要计算进共同海损受益的分摊总值中去。

3)GA Contributory Rate:计算共同海损的分摊比率,即第一和第二步的比值,公式为:

$$\text{GA Contribution Rate}=\frac{\text{Total GA Loss}}{\text{Total GA Contributory Value}}\times 100\%$$

4)GA Contribution:计算各方需分摊的费用,通常是用分摊比率乘以各方各自的收益值,公式为:

$$\text{GA Contribution of Party A}=\text{Party A's Contributory Value}\times \text{GA Contribution Rate}$$

2.6 CIC的承保范围

CIC有三个基本险,即平安险(FPA),水渍险(WPA)和一切险(AR);两种附加险,即一般附加险和特殊附加险。平安险主要包含海上风险所导致的全部和部分损失,以及救助的费用,但不包含自然灾害发生期间所导致的单独海损。而水渍险与平安险的主要

区别是水渍险包含了自然灾害发生期间所导致的单独海损。一切险还包括一般外来风险导致的损失,即包含一般附加险。特殊附加险则不属于任何三个基本险之一。基本险可单独投保,而附加险则只能附加在基本险上投保。具体来说,一般附加险附加在平安险、或水渍险上投保,而特殊附加险则附加在三个基本险上投保。

2.7 索赔的条件和时效

投保人的货物受损,投保人或保险受益人在进行索赔时,一定要满足三个条件:1)导致货物受损或灭失的风险属于承保范围之内;2)索赔人在货物受损或灭失时对货物有可保利益;3)货物受损或灭失发生在保险合同的起讫期限内。满足了这三个条件,索赔人就可以向保险人索赔。但期间还有一个索赔时效的问题。一般来说向保险公司提出索赔,索赔时效为2年,即从被保险的货物在目的地卸货港全部卸离海轮后起算,最多不超过2年。

在国际贸易中,有时索赔的对象不一定是保险人,而是买卖双方中的一方,或是承运人,这时也要注意索赔的时效问题。如向卖方提出索赔,时效一般在合同中做出规定,如没有相关规定,则以合同中的品质保证期为准,如果合同中没有品质保证期的规定,根据1980年的《联合国国际货物销售合同公约》(CISG)的规定,最长不超过2年,以买方收到货物之日起算。如果是向承运人索赔,不同规则规定不尽相同。比如《海牙规则》规定从货物交付之日或应交付之日起一年内提起诉讼,而《汉堡规则》和《鹿特丹规则》规定从货物交付之日或应交付之日起两年内提起诉讼。

2.8 语言点

1) 合同中的保险条款语言的组织

合同中保险条款通常由四大部分组成:投保方、投保的金额、投保的险别和依据的条款。如果由卖方代替买方投保,还需说明保险费由哪方来承担。

投保方:相应的英文是 Insurance to *be effected/covered/arranged/obtained by* ×××

代替投保的英文:Insurance to *be effected/covered/arranged by* ××× *on behalf of* ×××

投保的金额:通常要用介词 for 表示,如:*for* 110% of the invoice value

投保的险别:通常要用介词 against 或 分词 covering 表示,如:*against/covering* FPA and War Risk

依据的条款:通常要用介词 as per 表示,如 *as per* Ocean Marine Cargo Clauses of the People's Insurance Company of China dated 1998.1.1

保险费的支付:如果是卖方代替买方保险,则在合同中还应说明保险费用由哪方支付,如:premium to be *for Buyer's account/at Buyer's cost/at Buyer's expense*

2) cover 一词的用法

cover 在保险业务中是投保的意思,既可以作名词也可以作动词,如:

We will *cover* WPA insurance on your order. (我们将为你方订货投保水渍险。)

This insurance policy *covers* us against TPND. (这一保单承保了偷窃提货不着险。)

The underwriters are responsible for the claim as far as it is within the scope of *cover*.

(只要是在保险责任范围内,保险公司就应负责赔偿。)

coverage 即 scope of cover,是保险的承保范围的意思,如:

The loss in question was beyond the *coverage* granted by us. (所指的损失不在我们的保险承保范围之内。)

As long as the risks exposed to the goods insured fall within the insurance *coverage*, the insurance company shall be responsible for the compensation. (只要货物所受风险是在保险承保范围内,保险公司就应负责赔偿。)

3) claim 一词的用法

作动词的用法:claim against/on somebody for something, claim 后面通常跟索赔的金额(amount)或赔偿(compensation),如:

claim GBP2, 200 *for* the damage to the goods (因货物受损索赔 2, 200 英镑)

You should *claim on* the insurance company *for* the recovery of the loss. (你方应向保险公司要求赔偿损失。)

作名词的用法:claim 作名词时通常与下列动词搭配:lodge, file, make, raise, issue, put in, bring up, lay 等。它们的意思大同小异。如:

We shall *lodge a claim against* the insurance company *for* the goods damaged in transit. (我们将就货物在运输途中发生的损坏向保险公司提出索赔。)

We shall *file our claim against* you *for* all the losses incurred as a consequence of your failure to ship our order in time. (对于你方未能及时发运我们的订货所造成的损失,我们将向你方提出索赔。)

4) compensation 一词的用法

要求赔偿的英语表达可用 claim/lodge/demand/ask for compensation,如:

You will no doubt yourselves be *claiming compensation from* the party concerned, in which case we shall be glad to assist you with any information we can give you. (无疑你们自己要向有关方面索取赔偿。在这种情况下,我们乐于提供资料帮助你们。)

We reserve the right to *ask for compensation for* the loss. (我们保留要求赔偿损失的权利。)

compensate for 是动词词组,表示赔偿,补偿的意思。如:

We will replace any pen found to be unsatisfactory and on this particular batch are prepared to allow you a special discount of 5% to *compensate for* your trouble. (我们会更换质量差的笔,并且打算给予你方这批货 5%的特别折扣,以补偿你方的损失。)

3. Solutions to Exercises

I. Multiple choices.

1. The main documents adopted by the insured to make claims against the insurer are all of the following EXCEPT _____.

A. insurance documents B. transportation documents

C. commercial invoice and packing list D. insurance proposal

解：A、B 和 C 都是索赔所需文件，D 是投保书，是投保人填写后交给保险人申请投保之用的，不作索赔之用，故答案为 D。

2. Which of the following expressions is correct for the stipulation of insurance clauses in a CFR sales contract?

A. The seller shall arrange marine insurance covering WPA.

B. The buyer shall arrange marine insurance.

C. The buyer shall arrange marine insurance against All Risks.

D. The buyer shall arrange marine insurance covering FPA.

解：在买卖合同中，究竟由何方投保，一般取决于双方所选用的贸易术语。若采用 CFR 术语成交，保险则由买方自愿办理。对保险险别的选择应考虑多种因素，如货物的性质特点，包装，运输路线及船舶停靠港口，运输季节等。故答案 B 是最佳选项。

3. According to "Ocean Marine Cargo Clause of the People's Insurance Company of China", the coverage which cannot be effected independently is _____.

A. FPA B. WPA C. War Risk D. All Risks

解：FPA、WPA 和 All Risks 是我国海运货物保险的三个基本险别，可以单独投保，而 C 战争险是特殊附加险，附加险不能单独投保，只能在基本险的基础上附加投保，故根据题意，答案为 C。

4. Company A exported 5 metric tons of tea. The tea suffered heavy storm in transit. The sea water in the ship's hold led to the deterioration in the quality of part of the tea exported. This kind of loss is _____.

A. actual total loss B. constructive total loss

C. general average D. particular average

解：根据题意，部分茶叶受损，不是全损，可以排除 A 和 B；茶叶受损是由于遭受大雨，海水进入船舱引起的，而不是为了船货的共同利益、有意采取措施救助而导致的，因此这部分的损失应该属于单独海损，故答案为 D。

5. The insurance document that is acceptable mostly in China's Hong Kong, Singapore and Malaysia is _____.

A. insurance policy B. insurance certificate

C. combined certificate D. open policy

解：联合凭证(combined certificate)是比较简化的一种保险单据，保险公司只需将保险险别、金额、保险人和理赔代理人的名称和地址等内容加注在发票上，并经保险人签章就可以生效了。这种把发票和保险单结合起来的联合凭证，与保险单有同等效力，目前仅适用于中国香港、中国澳门和新加坡、马来西亚的出口业务中。故答案为 C。

6. The coverage of ICC (A) is equivalent to that of _____ of CIC.

A. FPA B. WPA

C. All Risks D. Additional Risks

解：根据伦敦保险协会的规定，ICC(A)采用"一切风险减除外责任"的办法，即除了

“除外责任”项下所列风险保险人不予负责外,其他风险均予负责。此与我国海运货物保险中的“一切险”的责任范围相当。故答案为 C。

7. Risks such as “failure to delivery risk” or “rejection risk” fall within the category of _____.

A. general extraneous risks　　B. special extraneous risks

C. natural calamities　　D. fortuitous accidents

解: 外来风险(extraneous risks)是由于外部因素而引起的损失,包括了一般外来风险(general extraneous risks)和特殊外来风险(special extraneous risks)两种,交货不到(failure to delivery risk)和进口国拒绝进口(rejection risk)属于后者,故答案为 B。

8. According to “Ocean Marine Cargo Clause of the People’s Insurance Company of China”, the basic coverage that is the least extensive is _____.

A. FPA　　B. WPA　　C. All Risks　　D. War Risk

解: 平安险(FPA)是三种基本险中险别最小的,保险公司对由于自然灾害所造成的单独海损不负责赔偿;水渍险(WPA)下,保险公司则在赔偿平安险范围内的风险外,还要赔偿这部分的损失;而一切险(All Risks)下,保险公司除保水渍险下的风险外,还要负责赔偿由一般外来风险所造成的损失,故答案为 A。

9. In the case of air transportation insurance, if the subject matter insured failed to reach the warehouse at the destination stipulated in the insurance policy, the expiration of the insurance is _____ after completion of discharge of the insured goods from the aircraft at the final port of discharge.

A. 15 days　　B. 30 days　　C. 60 days　　D. 90 days

解: 航空运输险的责任起讫也采用适用海运货物保险起讫范围的“仓至仓”条款,即自货物运离保险单所载明的起运地仓库开始至抵达保险单所载明的目的地交到收货人仓库为止。但与海运“仓至仓”条款不同的是,如果被保险货物未到达上述仓库,则承保期限以货物最后卸离飞机后满 30 天为止,而不是 60 天。15 天的这种说法适用于海运战争险中货物未卸离船只或邮包险中货物未抵达收件人处所的情况。故这道题的答案为 B。

10. Under _____ coverage of London Institute Cargo Clause, only major casualties are covered, but not natural calamities.

A. ICC(A)　　B. ICC(B)

C. ICC(C)　　D. Institute War Clause

解: 根据伦敦保险协会的规定,ICC(C)承保的范围比 ICC(A)、(B)小得多,它只承保“重大意外事故”,而不承保“自然灾害及非重大意外事故”。Institute War Clause 只承保战争导致的风险和损失,不承保意外事故或自然灾害。故答案为 C。

II. True or false statements.

1. __F__ In marine cargo insurance, general average is to be borne by the carrier, who may, upon presentation of evidence of the loss, recover the loss from the insurance underwriter.

解：共同海损是船舶、货物或其他财产遭遇共同危险，为了解除共同危险，有意采取合理的措施，所直接造成的特殊牺牲和支付的特殊费用。共同海损发生后，凡属共同海损的费用和牺牲，均可通过共同海损理算，由有关获益方(即船方、货方和运费收入方)根据获救价值按比例分摊。

2. __F__ In Chinese insurance practice, open policy is the same as the insurance certificate.

解：保险凭证(insurance certificate)是一种背面省去了保险条款的简化了的保险单，与保险单具有同等效力。而预约保险单(open policy)是指保险人承保被保险人在一定时期内(通常六个月到一年)发运的全部货物所处理的一种保险单。凡是预约保险合同内的进出口货物，一经起运即按预约保险单所列条件承保。但是被保险人在获悉每批货物起运时，应立即通知保险公司该批货物的详情，方便让保险公司签发保险凭证，也方便将来根据凭证结算保险费用。目前，在我国预约保险单仅适用于以 FOB 或 CFR 等条件成交的进口货物的保险。

3. __T__ Special Additional Insurance Coverage such as War Risk, SRCC and so on must be taken out together with FPA, WPA or All Risks.

解：FPA、WPA 和 All Risks 是我国海运货物保险的三个基本险别，可以单独投保，但是特殊附加险不能单独投保，只能在基本险的基础上附加投保。

4. __F__ Perils of the sea, such as vessel being stranded or grounded covered in an insurance policy is one kind of general extraneous risks.

解：Perils of the sea 和 general extraneous risks 是 risk 的两大种类，前者包括自然灾害和意外事故，而此题中的船只触礁搁浅属于其中的意外事故。

5. __T__ The coverage of Land Transportation Risk and Air Transportation Risk are almost equivalent to WPA in marine cargo insurance.

解：与海运货物保险有三种基本险不同的是，路运和空运货物保险的基本险别只有两种，即陆运/空运险和陆运/空运一切险，其中，陆运/空运险的承保范围与海运水渍险相似，而陆运/空运一切险的承保范围则与海运一切险相似。

6. __F__ Subrogation Principle states that in the event of loss of or damage to the subject matter insured resulting from an insured peril, the insured is placed in the same position that he had enjoyed immediately before the loss occurred.

解：这是概念混淆的题目。代位求偿权原则(subrogation principle)是指当保险标的遭受保险事故，依法应由第三者承担赔偿责任时，保险公司自支付保险赔偿金之日起，在赔偿金额的限度内，取得向第三者请求赔偿的权利。此题是保险的另一原则赔偿原则(indemnity principle)的定义。

7. __T__ The 10% markup rate of the commercial invoice value in an insurance policy is to cover an anticipated profit as well as other additional costs involved.

解：在海运货物保险中，被保险人一般把货值(C)、运费(F)、保险费(I)以及转售该笔货物的预期利润和费用的总和，作为保险金额，国际贸易中一般习惯上按 CIF 总值的110%投保，超出的 10%为投保加成，这 10%就是货物的预期利润和额外费用的总和。如

果加成率过高,就会有骗保的情况产生。

8. __T__ Under a deductible franchise, where the loss or damage exceeds the percentage allowed, the insurance company needs merely indemnify the exceeding part to the insured.

解: 所谓免赔率,是指不赔金额与损失金额的比率。免赔率分为相对免赔率(non-deductible franchise)与绝对免赔率(deductible franchise)两种。前者指保险公司对超出免赔部分的损失进行赔偿,赔偿金额包含免赔金额;而后者虽也指保险公司对超出免赔部分的损失进行赔偿,但赔偿金额不包含免赔金额。

9. __F__ Ocean marine insurance covers ships and their cargo only on the high seas and not on inland waterways.

解: 这里的海上货物保险是广义的保险,它承保包括船只及其货物在海运和内陆水运中所遭受的风险。

10. __F__ The claimant is the party who suffers loss of or damage to the subject matter insured by himself.

解: 货物遭受承保范围内的损失或灭失时,其索赔人可以是投保人,也可以不是,要视具体情况而定,究其原因是货物在运输的过程中物权发生转移所致。索赔人要求索赔的条件之一就是在货物遭受承保范围内的损失或灭失时,索赔人能证明其对货物有可保利益。比如在 CIF 条件下,投保人是卖方,如果货物的损失或灭失发生在风险转移之前,索赔人是卖方,如果是之后,则索赔人是买方。

III. Explain the following terms.

1. insurable interest

答: Insurable interest is the interest in insurance subject matter (cargo or property accepted for insurance) held by the insurant and recognized by laws, indicating that the insurant will suffer some financial losses if any maritime risks materialize.

2. Utmost Good Faith Principle

答: The Utmost Good Faith Principle or Bona Fide Principle means that both parties shall be honest and faithful when entering into an insurance contract. In other words, the insurant shall provide the insurer with all the important facts that will influence the judgment and evaluation by the insurer to the perils and the insurer shall likewise expose to the insurant all details concerning the scope of insurance coverage and conditions for claims.

3. Indemnity Principle

答: The Indemnity Principle means that in the event of loss of or damage to the subject matter resulting from an insured peril, the insurer shall compensate the claimant exactly what the latter has lost in the occurrence of the peril. In practice, this is almost always compensated by paying an amount of money equal to the value of the goods lost or damaged.

4. Proximate Cause Principle

答: The proximate cause refers to the major and/or effective reason that has caused the accident and the proximate cause principle is employed in the judgment of causation between

accidents and losses.

5. cargo transportation insurance

答: Cargo transportation insurance means that the insurant, referred to as either the exporter or importer, enters with an insurance company and/or an underwriter into a contract of insurance in which the insurant undertakes the payment of an insurance premium and the insurance company will, according to the terms indicated in the insurance contract, indemnify the insurant of any loss that occurs within the insurance coverage.

6. marine cargo insurance contract

答: Marine cargo insurance contract refers to a contract between the insurer and the assured whereby the insurer undertakes to indemnify the assured in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

7. General Average Contribution

答: Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a ratable contribution from the other parties interested and such contribution is called a general average contribution.

8. inherent vice

答: Inherent vice refers to the inherent tendency of the cargo to deteriorate due to the essential instability of the components not resulted from an external cause.

9. Warehouse to Warehouse Clause

答: Warehouse to Warehouse Clause refers to the commencement and termination period of insurance throughout which the insurance company undertakes an insurance liability. According to it, the insurance company undertakes an insurance liability over the insured cargo from the warehouse or place of storage of the shipper named in the policy until the cargo has arrived at the warehouse or place of storage of the receiver named in the policy, limited to sixty (60) days after completion of discharge of the insured goods from the seagoing vessel at the final port of discharge before they reach the above mentioned warehouse or place of storage.

10. franchise

答: Franchise in insurance refers to the practice that the loss or damage below a certain specified percentage value is non-recoverable. Franchise can be classified into two categories: deductible franchise and non-deductible franchise. Under a deductible franchise, where the loss or damage exceeds the percentage allowed, the insurance company needs merely indemnify the exceeding part to the insured whereas under a non-deductible franchise, as long as the loss or damage exceeds the franchise percentage, the insurance company shall indemnify full amount to the insured.

IV. Short questions.

1. What are the four insurance principles guiding insurance practice in China?

答: The four principles guiding insurance practice in China are the Insurable Interest Principle, the Utmost Good Faith Principle, the Indemnity Principle and the Proximate Cause Principle.

2. What are the differences between general average and particular average?

答: Although both general average and particular average belong to the category of partial loss, there are still some differences between them:

- Causes: Particular average is a kind of cargo loss usually caused directly by sea perils, while general average is caused by intentional measures taken to save the common interest.
- Indemnification: Particular average is often borne by the party whose cargo is damaged, while general average should be proportionally contributed among all parties benefited from the intentional measures.

3. What are the conditions for general average?

答: A partial loss can be treated as general average if it is formed upon the following conditions:

- The danger that threats the common safety of cargo and/or vessel shall be materially existent and is not foreseen.
- The measures taken by the master shall be aimed to remove the common danger of both vessel and cargo and shall be undertaken deliberately and reasonably for common safety.
- The sacrifice shall be specialized and not caused by perils directly and the expense incurred shall be additional expense which is not within the operational budget.
- The actions of the ship's master shall be successful in saving the voyage.

4. What are the differences between the scope of ICC (B) and ICC (C)?

答: The scope of ICC (C) covers loss of or damage to the cargo attributable to fire or explosion; vessel of craft being stranded, grounded, sunk or capsized; overturning or derailment of land conveyance; collision or contact of vessel, craft or conveyance with any external object other than water; or discharge of cargo at a port of distress; general average sacrifice; or jettison.

Apart from those covered under ICC (C), the scope of ICC (B) also covers loss of or damage to the subject matter insured attributable to earthquake, volcanic eruption or lightning; washing overboard; entry of sea, lake or river water into vessel, craft, conveyance, container, liftvan or place of storage; or total loss of any package lost overboard or dropped whilst loading onto or unloading from, vessel or craft.

5. What are the risks that are known as General Additional Insurance Coverage?

答: General Additional Insurance Coverage mainly covers 11 types of risks:

- TPND (Theft, Pilferage and Non-delivery)

- Fresh Water Rain Damage
- Risk of Shortage
- Risk of Intermixture and Contamination
- Risk of Leakage
- Risk of Clash and Breakage
- Risk of Odor
- Heating and Sweating Risk
- Hook Damage
- Risk of Rust
- Breakage of Packing Damage

6. What are main expenses involved in ocean marine insurance? How to define them?

答: Marine cargo insurance also covers the expenses incurred to avoid or reduce the damage to or loss of the subject matter insured. There are mainly two types of expenses. One is sue and labor expenses, and the other is salvage charges.

Sue or labor expenses are extraordinary expenses made in a time of peril by the insured to act to avert, or minimize any loss of or damage to the subject matter insured. Salvage charges are expenses resulting from measures properly taken by a third party other than the insured, his agents, or any person employed by them to preserve maritime property from perils at sea.

7. What documents are needed when an insurance claim is made?

答: When making an insurance claim, the claimant usually is required to submit the following documents:

- Original insurance policy or insurance certificate
- Original bill of lading or other transport document
- Commercial invoice
- Packing list
- Certificate of Loss (Certificate of Survey)
- The landing account or weight notes (notes on weight) at destination
- Any correspondence with the carrier or any other party who could be responsible for the loss or damage
- Master's protest

8. What are the prerequisites for a claim?

答: The prerequisites for a claim are:

- The risks exposed to the goods insured should fall within the insurance coverage stipulated in the insurance policy.
- The claimant should be able to evidence the insurable interest he has in the goods insured.
- The risks covered should occur within the duration of the insurance liability.

V. Calculation.

1. A Chinese company offered to a British counterpart in London at USD500 per case FOB Shanghai. The British importer asked the exporter to offer a CIF price. Suppose the freight is USD50 per case and premium rate is 0.5%, what would be the new offer?

解:

$$\text{CIF}=\frac{\text{FOB}+\text{F}}{1-110\%\times\text{R}}=\frac{500+50}{1-110\%\times0.5\%}\approx \text{USD553}$$

Answer: The new offer is USD553 per case CIF London.

2. Company A transacted with Company B, exporting frozen food under CIF. The total amount of the invoice value was USD10,000. The premium rate was 0.4% and the goods were insured against FPA with a markup of 10%. Please calculate the insurance amount and insurance premium respectively?

解:

Insurance amount = CIF×(1 + markup rate)
= 10,000×110% = USD11,000
Insurance premium = CIF insurance amount × insurance rate
= 11,000×0.4% = USD44

Answer: The insurance amount and insurance premium are USD11,000 and USD44 respectively.

3. Our exporting company offered 100 metric tons (5,000 cartons) products to a British importer at GBP89 per carton CIF London (insurance for All Risks with 10% markup and 1% premium rate). When the goods arrived in London, it was found that 5 cartons and another 380 kilograms were in short. Suppose the insurer is liable for the shortage, how much should he compensate?

解:

100 mt /5,000 ctn = 100×1,000 kilo/5,000 ctn = 20 kilo /ctn
[89×5+89×380/20]×110% = GBP2,349.6

Answer: The insurer should compensate GBP2,349.6.

VI. Case studies.

1. X Company signed a CIF contract to export candies. The cargo was insured for All Risks. Due to the long voyage, candies absorbed sweating in the ship's hold, and thus softened and degraded. Was the insurance company liable for the damage? Why or why not?

析: 答案:No。案例中提到"due to the long voyage, candies absorbed sweating in the ship's hold and thus softened and degraded", 这说明 candies 变软的原因在于长时间海上运输,吸收了船舱的热气所致。保险公司不应给予赔偿原因有三:1) 在货物运输保险中

没有“长时间运输”这一风险;2) candy 变软是由于其本身的货物特性决定的,糖果即使在常温下摆放一段时间都会变软,因此可认为是糖果的内在瑕疵(inherent vice)所导致的;3) 虽然一般附加险中包含了“heating and sweating”这一险种,但此险种是指由于某种意外的原因(如船上的制冷设备坏了)导致船舱内温度、湿度突然变化,造成货物品质变化的情况,本案例不属于此情况。

答题的切入点:1) 货物 inherent vice 属于保险公司的除外责任; 2) “heating and sweating risk” 的适用范围。

2. A Chinese company exported 100 cartons of lipstick to an Australian Co. in December and another 100 cartons to a French Co. in September both with CIF contracts. Both shipments were insured for All Risks. In the transit from the Chinese company's warehouse to the port of shipment, due to the hot weather in summer, most of the lipsticks for the French buyer melt (the melting point of these lipsticks was 35℃). When the Australian buyer was taking the goods from the destination port to his warehouse, the same problem happened. Analyze and explain under each deal who should take the risks and losses? Are they entitled to compensation from the insurance company?

析:本题的解题要点:a. 理解 CIF 合同的性质,CIF 合同是“shipment contract”,象征性发货(symbolic delivery),风险转移是在货物装上船后。决定哪一方是货物的受损方,要看货物受损是发生在风险转移之前还是之后。发生在之前,卖方是受损方;之后,则买方是受损方。b. 在买了保险的情况下,受损方通常会提起索赔,但索赔要满足三个条件,如果投保人或受益人投了保,且风险在承保范围内,又对受损货物有可保利益,同时又能满足仓至仓条款,索赔人就可以向保险公司索赔。c. 要了解货物受损是否是保险范围内的,这里的受热融化是自然现象,属于货物自身缺陷所致(inherent vice),保险公司不赔偿。

答案:与法国公司的合同中,出口商中国公司承担风险和损失; 与澳大利亚公司的合同中,进口商澳大利亚公司承担风险和损失。他们都无权向保险公司索赔。

答题切入点:术语的理解, 风险转移点的确定;满足索赔的条件:保险范围、可保利益和保险起讫期限;保险的免责范围。

3. On a voyage the cargo ship had an accidental fire. To save the ship, the captain ordered to pour water into the compartment. The fire was put out.

1) For Party X, his goods burnt amounted to 10% of USD0. 5 million cargo;

2) For Party Y, his goods damaged due to water poured accounted for 20% of USD1 million cargo;

3) For the carrier, engine damages due to the fire equaled 10% of USD50 million ship;

4) Extra wages for the seamen totaled USD50, 000.

Based on the information above, indicate

A. Which is PA? Why?

B. Which is GA? Why?

C. What is the GA contribution for each party?

解：本题的关键在于对共同海损和单独海损的区别和共同海损分摊的计算。单独海损是承保风险所直接导致的船货损失。共同海损不是承保风险所直接导致的损失，而是指载货的船舶在海上遇到灾害或者意外事故，威胁到船货各方的共同安全，为解除这种危险，维护船货安全，由船方有意识地、合理地采取措施，所作出的某些特殊牺牲或支出的某些额外的费用。

1）答案：Party X 和 carrier 的损失。

2）答案：Party Y 的损失和海员的拯救费用。

答题切入点：共同海损和单独海损的区别，及满足共同海损的条件。

3）GA Total loss = 20% × 1 + 0. 05 = USD0. 25m

GA Total Benefit = 0. 5 × 90% + 50 × 90% + 1 = USD46. 45m

GA contribution rate = (Total GA Loss / Total GA Contributory Value) × 100%

= (0. 25/46. 45) × 100% = 0. 005 4 × 100% = 0. 54%

GA Contribution by X = 0. 5 × 90% × 0. 54% = 0. 002, 43m ≈ USD2, 430

GA Contribution by Y = 1 × 0. 54% = 0. 005, 4m ≈ USD5, 400

GA Contribution by Carrier = 50 × 90% × 0. 54% = 0. 243m ≈ USD243, 000

答题切入点：共同海损计算的步骤。

4. An importer signed an FOB contract with an Australian company, importing a batch of woolen blanket. The contract required that goods carried by containers. The goods were packed as follows: each blanket in a plastic bag, four blankets to a large polyethylene bag. The importer effected insurance against WPA and War Risk. When goods arrived at the destination, the goods were found wet to different extents. Upon careful investigation, finally the importer found that there were several holes on the top of the container, the biggest of which was as big as 4cm in diameter. The importer faxed the exporter, asking for compensation. However, the exporter suggested the importer to lodge a claim against the insurer for compensation. Comment on this case and work out the solution.

析：本题的关键在于分析损失应该由谁来负责。

1）卖方的损失？这里要理解 FOB 术语中，出口方的交货的责任范围。本案例中卖方已经按合同和术语要求完成了交货，货物受损是在风险转移之后，因此损失应该由买方负责。

此部分的答题切入点：FOB 术语中出口方责任的理解，风险转移点的理解。

2）保险公司负责理赔？案例中“the exporter suggested the importer to lodge a claim against the insurer for compensation”这说法不正确。进口商虽然投保了 WPA 和战争险，但损失是由于集装箱的问题造成的，属于第三方的责任，买方没有理由向保险公司索赔。

此部分的答题切入点：保险险别的承保范围，点出货物受损的直接原因。

3）谁是第三责任方？货物受损是由于承运人提供的集装箱出问题而导致的，因此，承运人应该负担责任，买方应该向承运人索赔。

此部分的答题切入点：承运人的责任。

5. An African seller signed a CIF contract exporting goods to an American buyer. The

seller insured the goods against All Risks at the request of the buyer and transferred the insurance policy and the bill of lading to the buyer afterwards. In transit from the seller's warehouse to the port of shipment, the goods suffered losses which were within the insurance coverage. When the buyer asked the insurer for compensation with the insurance policy, the insurer refused to make compensation on the ground that the buyer held no insurable interest in the goods when the loss occured. Comment on the case.

析:本题的解题要点:保险单转让之后,保险单的权益就有效地转让给了买方,买方就承受了保险单项下的全部权益和责任。卖方在货物受损时对货物具有可保利益,但卖方把他的权益转让给买方之后,买方有权利向保险公司索赔本来属于卖方的权益。保险公司根据保险单承保范围和保险条款中的"仓至仓"条款,应该赔偿买方的损失。

答题切入点:1)保单转让后权益和责任的变化;2)索赔的条件。

Chapter Seven

International Payments

1. Background and Suggestions for Teaching and Learning

1.1 背景知识

本章的内容基本上还是按照传统的知识结构来组织的,即仍然把汇付、托收和信用证作为最主要的支付方式,其中又以信用证为首。但随着国际贸易的不断发展演变,国际金融体系的进一步灵活操作,贸易商在选用的支付方式上也发生着很多变化。历来被认为是最佳支付方式的信用证在实际贸易中的使用比例不断下降,更灵活的汇付和托收的使用率不断上升。在近年,更有像保理和福费庭这些融资方式渐渐为贸易商接受,广泛应用于国际贸易中。所以这章内容的学习,意在建立起对国际支付的一个基本了解,对于各种方式的应用学习者还应该根据贸易的实际情况来进行综合考虑,才予以决策。

涉及国际支付有不少相关的文件,如管辖托收业务的《托收统一规则》(*Uniform Rules for Collection* 522/*URC*522),和管辖跟单信用证业务的《跟单信用证统一惯例》(*Uniform Customs and Practice for Documentary Credits* 600/*UCP* 600)。为了更好地掌握和运用这些支付方式,学习者应该多阅读此类文件,了解一些操作的细节。尤其是像 *UCP* 600, 该文件推出的时间较晚,在原有的 UCP 500 的基础上进行了不少修改,学习者可以对比两者之间的变化,体会贸易实务进化演变的趋势。

《跟单信用证统一惯例》最初的名称为 *Uniform Regulations for Commercial Documentary Credit*, 内容几经修改,最终于 1933 年以国际商会第 82 号出版物第一次公布。《统一惯例》产生后,随着国际贸易的发展,尤其是运输和通讯技术的进步,国际商会对该文件进行了多次的修订。1962 年国际商会的第 19 次大会通过和公布了将"commercial"一词去掉的决定,将名称确定为 *Uniform Customs and Practice for Documentary Credits*, 简称 UCP,该名称沿用至今。目前最新的修订文本是国际商会以第 600 号出版物公布的《跟单信用证统一惯例》2007 年修订本。世界上已有 170 多个国家和地区的银行采纳《统一惯例》,国际贸易

实务中绝大多数的信用证都是依据《统一惯例》开立的。

1.2 教学目标及建议

在完成本章节的学习之后,学习者应达到以下目标:

- 掌握处理国际支付中的关键问题
- 能举出几种不同的支付工具,尤其是汇票的特征
- 能对各种支付方式的特点进行比较
- 能够辨别不同支付方式中所涉及的各参与方
- 能够阐述信用证使用过程的各个步骤
- 能够解释跟单信用证的各种变形
- 对出口融资形成基本的了解

这一章节介绍在国际贸易的支付环节会涉及的一些知识,教学的重点可以放在汇票、汇付、托收和信用证这几个内容上,建议安排 8~12 个课时进行讲解。

1.3 知识结构图

- 国际货款支付
  - 影响支付条件的因素
    - 支付货币
    - 信用风险的承担
    - 各支付方式的费用
    - 政治和法律风险
  - 支付工具
    - 汇票
      - 汇票的含义及基本内容
      - 汇票的分类
    - 本票
      - 本票的含义
      - 本票的分类
    - 支票
  - 支付方式
    - 汇付
      - 汇付的程序及当事人
      - 汇付的种类
        - 信汇
        - 电汇
        - 票汇
      - 汇付方式在国际贸易中的使用
    - 托收
      - 托收的含义及当事人托收的程序
      - 托收的种类
        - 光票托收
        - 跟单托收
          - 付款交单
          - 承兑交单
    - 信用证
      - 信用证的含义及特点
      - 信用证开立的程序
      - 信用证的支付方式
        - 即期支付
        - 延期支付
        - 承兑支付
        - 议付
      - 信用证的种类
    - 保函
  - 出口融资
    - 信用证相关的融资
    - 保理业务
    - 福费庭业务
  - 支付中易出现的问题

2. Learning Points

2.1 支付工具与支付方式的区别

在进一步学习国际支付知识之前,应该首先明确区别信用工具(credit instrument)和支付方式(term of payment)这两个概念。当被问到"用什么方式可以进行支付"的时候,有人可能会回答"汇票",又有人可能会回答"信用证"。这就是对前面提到的两个概念的混淆。信用工具,或有时称为支付工具、流通工具,是指流通于经济领域的各种票据,是以支付货币为目的的特殊证券。而支付方式,有时又称为结算方式,是指用一定的形式和条件来完成收、付双方之间债权债务清偿的程序和方法。它包括一系列的活动,而不是单纯的一种证券。各种支付方式可能要求使用各种不同的支付工具,相同的支付工具也可能使用在不同的支付方式中,这取决于各支付方式的性质和特点及支付中各方的关系。

2.2 远期汇票的使用

如果出票人使用远期汇票,就是要向受票人提供一段时间的信用期,以便其进行相应的融资。对信用期的规定主要有四种方式。一种是见票后若干天付款(at _____ days sight 或 at _____ days after sight),要求受票人在远期汇票被提示后的若干天向收款人支付相应款项。第二种是出票后若干天付款(at _____ days after day),这种情况下信用期由汇票上的出票日期开始计算,第三种是提单签发日后若干天付款或装船后若干天付款(at _____ days after shipment 或 at _____ days after date of B/L),这时信用期的计算从提单的签发日开始。最后一种是指定将来某个具体日期作为汇票的到期日。

当收款人向受票人提示远期汇票时,受票人虽然不需要马上付款,但必须对汇票进行承兑。承兑是指付款人在汇票上签章表示承诺将来在汇票到期时承担付款义务的一种行为。在承兑的时候,通常受票人要在汇票的正面打斜注明汇票提示的时间、汇票到期的时间和到期付款的承诺。受票人还必须在票面上签字盖章。汇票到期的时候,收款人向受票人出示已经承兑的汇票,受票人就必须无条件地向收款人支付款项。

2.3 汇付的两种情况

教科书第 210 页的图 7.2 描述了使用汇付可能出现的两种流程,分别用实线和虚线表示。在第一种情况下(用实线表示的流程),进口商首先向银行提交汇付申请,汇出行接受申请后就会用信件、电报、电传或 SWIFT 的方式把汇付的指示发给在出口国的某个关系行,让这间汇入行向出口商指定的银行和账户汇入货款。一般信汇和电汇都属于这种情况。而另外一种情况则是,汇出行在收到进口商的汇付申请后,就开出一张以在出口国的关系行,更普遍的情况是汇出行在出口国的分行为受票人的汇票,交给进口商。出口商从进口商那里收到汇票后就可以到汇出行支取货款。票汇的流程就属于这种情况。

2.4 特殊方式的托收

根据《托收统一规则》,托收主要有两种方式:即期付款交单和承兑交单。但在实际操作中,不少贸易商还沿用以前的一些做法,如远期付款交单凭信托收据借单(D/P. T/R)。远期付款交单凭信托收据借单实际上是对远期付款交单这种支付方式所存在缺陷的一种修补手段。使用远期付款交单时,由于进口商还是只能在付了款的时候才能够拿到单据,即使对远期汇票进行承兑,代收行也不能够放单。远期汇票给进口商提供的信用期没有能够发挥作用,因为货物提不出来,无法进行销售,资金也无法回笼。这时,信托收据的使用就可以解决这个问题。在货物到达港口后,进口商可凭信托收据从代收行先借出单据去处理货物,待汇票到期时再付款。这就是所谓的远期付款交单凭信托收据借单。使用这一支付方式时要注意其中存在的风险。假如托收指示中允许凭信托收据借单,则由此产生的风险由委托人,即出口商自负。这与承兑交单的情况很相似。假如托收指示中未提到允许凭信托收据借单,由代收行自行决定借出单据,则由此而产生的一切风险由代收行承担。

2.5 信用证的结算与种类

当信用证的受益人,即出口商按照信用证要求提交了要求的单据之后,银行根据彼此间不同的偿付方式与最终向受益人付款的方式,有四种结算的方式:即期付款结算、远期付款结算、承兑结算和议付结算。

国际贸易中最常用的是议付结算的信用证(settlement by negotiation)。议付结算是指允许受益人向某一指定银行或任何银行交单进行议付,通常在单证相符的条件下,银行扣取垫付利息和手续费后立即将货款垫付给受益人。议付结算的信用证可分为自由议付信用证和限制议付信用证,前者受益人可任意选择一家银行作为议付行,后者则由开证行在信用证中指定一家银行为议付行。开证行对议付行承担付款责任。如果议付行已将货款垫付给了受益人,而开证行发现单证不符而拒绝付款,议付行有向受益人追索已付款项的权利。

即期付款结算和远期付款结算都在信用证上明确规定一家银行为付款行,不要求受益人出具汇票,仅凭提交的单据付款。承兑结算则规定由开证行或指定的承兑行对受益人开出的远期汇票进行承兑。以上三种信用证,是否有银行愿意议付与开证银行无关。

根据信用证的一些特性,可以把它分成许多种类。课文主要介绍了常见的和比较特殊的几种。

跟单信用证(documentary credit)是开证行凭跟单汇票或单纯凭单据付款的信用证。单据是指代表货物或证明货物已交运的运输单据。如提单、铁路运单、航空运单等。通常还包括发票、装箱单、保险单等商业单据和一些由官方机构签发的单证,如原产地证、商检证书等。国际贸易中一般使用跟单信用证为主。不跟单信用证(clean credit)是开证行仅凭不附单据的汇票付款的信用证,汇票如附有不包括运输单据的发票、货物清单等单据,仍属于不跟单操作。

可转让信用证证上必须清楚注有“transferable”。受益人有权将信用证的全部或部分转让给一个或数个第三者(即第二受益人)使用。可转让信用证的受益人一般是中间商,

而第二受益人则是实际的生产商。受益人在收到可转让信用证后,可以要求信用证中的授权银行,即转让行向第二受益人开出新证,但新证仍由原开证行承担付款责任。新证上的基本条款不变,但其中信用证金额、商品单价可以减少,有效期和装运期可以提前,投保比例可以增加,原受益人则可以变成申请人。可转让信用证只能转让一次,即第二受益人不能再转让给新的受益人;但一份证可以分割转让给几个第二受益人。在使用过程中,当第二受益人向转让行交单后,原受益人有权以自己的发票和汇票替换第二受益人的发票和汇票,以取得原证和新证之间的差额。

循环信用证(revolving credit)是指信用证被全部或部分使用后,其金额可恢复使用直至达到规定次数或累积总金额为止的信用证。这种信用证适用于分批均衡供应,分批结汇的长期合同,以使进口商减少多次开证的手续、费用和押金。它使出口商既能得到收取全部交易货款的保障,又减少了逐笔通知和审批的手续和费用。循环信用证的循环方式可分为按时间循环和按金额循环。循环信用证的循环条件有三种:(1)自动循环。即不需开证银行的通知,信用证即可按所规定的方式恢复使用。(2)半自动循环。在使用后,开证行未在规定期限内提出停止循环的通知即可恢复使用。(3)非自动循环。在每期使用后,必须等待开证行通知,才能恢复使用。

背对背信用证(back to back credit)是指受益人以原信用证为抵押,要求银行以原证为基础,另开立一张内容相似的信用证。背对背信用证通常由中间商申请开给实际供应商。其使用方式与可转让信用证相似,所不同的是原证开证行并不授权受益人转让,因而也不对新证的付款负责。

对开信用证(reciprocal credit)在使用时不是指一份信用证,而是两份互相制约的信用证。进出口双方互为两份信用证的开证申请人和受益人,双方的银行互为开证行和通知行。通常先行开出的信用证会注明,该证需待回头信用证开出后才生效。这种信用证一般用于补偿贸易、易货贸易和对外加工装配业务。

红条款信用证(red clause credit)又称预支信用证(anticipatory credit)。使用这种信用证,进口商允许银行在客户出口交单前向其预先支付全部或部分款项,从而使出口商获得融资。开证行在信用证上加列上述条款时,通常用红字打成,故此种信用证称为"红条款信用证"。使用这种信用证时,进口商的风险增加。如果出口商预支货款后不能够按信用证要求交单结算,银行预支的款项以及利息都必须由进口商来偿还。

备用信用证(standby letter of credit)作为信用证的一个分支,又被称为商业票据信用证、担保信用证或保证信用证,它是信用证的一种特殊形式。备用信用证与其他商业信用证相比,在定义上并没有什么不同,都是银行(开证行)应申请人的请求,向受益人开立的,在一定条件下凭规定的单据向受益人支付一定款项的书面凭证。所不同的是,受益人用于向开证行要求付款的单据不同。备用信用证项下受益人需要提交的单据,不是诸如海运提单一类的商业单据,而是受益人出具的关于申请人违约的声明或证明。从这种意义上说,备用信用证和银行保函的内容和作用已趋一致。所不同的只是两者遵循的惯例不同。备用信用证受 UCP 600 和《国际备用信用证惯例》(*International Standby Practices/ISP*98)的管辖,而银行保函则适用于《见索即付保函统一规则》(*Uniform Rules For Demand Guarantees/URDG*458)。

2.6 语言点

在讲到支付方式的时候,注意几个动词的使用。

开出汇票	to draw a draft
	to issue a bill of exchange
提示汇票	to present the draft
对汇票承兑	to accept the draft
把汇票贴现	to discount the bill of exchange
电汇付款	to pay by T/T
	to remit the payment by T/T
开立信用证	to open an L/C
	to issue an L/C

3. Solutions to Exercises

I. Multiple choices.

1. If there is no specific provision, the draft under a letter of credit should draw on the _____.

A. advising bank B. issuing bank C. negotiating bank D. applicant

解: 由于信用证是由开证行开出给受益人的有条件的支付承诺,所以在没有特别规定的情况下开证行是支付的第一责任人。信用证项下的汇票应该以开证行作为受票人要求其履行支付义务。故答案为 B。

2. The draft used in collection is _____.

A. a banker's draft, based on bank credit

B. a commercial draft, based on bank credit

C. a banker's draft, based on commercial credit

D. a commercial draft, based on commercial credit

解: 托收的支付方式是通过委托银行协助收取货款,银行在此过程中并不承担必须收到款项的义务,所以它不是基于银行信用的,A、B 都不对。在托收情况下使用的汇票是由卖方向买方或买方的银行开出的,所以是商业汇票而不是银行汇票。故答案为 D。

3. A standby credit _____.

A. is a documentary credit

B. is a special clean credit

C. can be a documentary credit as well as a clean credit

D. is not a real letter of credit, but a letter of guarantee

解: 备用信用证是具有保函性质的特殊信用证,它是在信用证申请人不能履行所承诺义务的情况下,支付受益人特定金额的一种担保。受益人在索取付款时不须提供系列商业单据,而只需提供汇票及申请人不能履行所承诺义务的声明。故答案为 B。

4. Under collection once the importer refuses to pay, the _____ will be responsible for the cargo release, customs clearance, warehousing, and reselling in the importing country.

A. drawee B. collecting bank

C. principal D. presenting bank

解：由于托收是通过委托银行协助收取货款,银行既不承担必须收到货款的责任,也不负责货物的处理,所以在进口方拒绝提货及付款的情况下,出口方要自行负责在进口国的货物处理工作,出口方即为托收的委托人(principal)。故答案为 C。

5. The bill of exchange used in D/A must be a _____.

A. sight bill B. bank bill

C. bank accepted bill D. usance bill

解：D/A 指的是承兑交单。在承兑交单的付款方式下,卖方允许买方在先对汇票进行承兑而不立即付款的情况下取出单据提货,在未来的一个商定日期再付款。这时要使用的就是一份远期汇票。故答案为 D。

6. If a bank other than the issuing bank guarantees the payment under an L/C, this L/C is _____.

A. a confirmed credit B. an irrevocable credit

C. non-transferable credit D. a negotiable credit

解：保兑信用证是指开证行以外的另一间银行对该信用证进行担保,保证在开证行不能对受益人进行支付的情况下承担开证行的所有支付义务。故答案为 A。

7. A _____ credit is normally used in processing trade.

A. back to back B. revolving

C. reciprocal D. red clause

解：对开信用证是指两张信用证的开证申请人互以对方为受益人而开立的信用证。在来料加工和补偿贸易业务时,交易的双方都担心凭第一张信用证出口或进口后,另一方不履行进口或出口的义务,于是采用对开信用证这种互相联系、互为条件的开证办法,用以彼此约束。故答案为 C。

8. Which of the following statements is NOT true about remittance?

A. It provides highest security to the buyer but not the seller.

B. It is cheaper to use than the other terms of payment.

C. It is based on commercial credit, not bank credit.

D. It may impose high risk either to the buyer or to the seller.

解：汇付是建立在商业信用上的一种支付方式。买卖双方都会承担风险。如采取预付货款的方式则买方承担的风险更高,而当采用货到付款的方式卖方风险就增大。因此在此支付方式下双方都没有保障。故答案为 A。

9. _____ is an L/C based financing which will provide the exporter funds before the goods are produced.

A . Factoring B. Packing loan C. Forfeiting D. Negotiation

解：打包贷款(packing loan)是在出货前就把收到的信用证拿到银行进行贷款融资

的行为。而答案 D 议付则是在货物发运后用相关单据进行抵押融资。A 和 C 都是与信用证无关的其它融资方法。故答案为 B。

10. If the exporter finds out mistakes on a received L/C, he should contact the _____ at the first place.

A. advising bank　　B. importer

C. negotiating bank　　D. issuing bank

解：当发现信用证有不符点的时候,受益人(一般指出口方)应第一时间通知申请人(一般为进口方)进行改证。故答案为 B。

II. True or false statements.

1. __F__ If the remittance is made by a banker's demand draft, this payment is based on bank credit.

解：汇付是建立在商业信用上的一种支付方式。即使使用了银行汇票,这种特性也不会改变。

2. __T__ For a confirmed credit, the confirming bank holds the same liability as the issuing bank.

解：保兑信用证是指开证行以外的一间银行对该信用证进行担保,保证在开证行不能对受益人进行支付的情况下承担开证行的所有支付义务。因此它的偿付责任与开证行是相同的。

3. __T__ A letter of credit which does not indicate whether it is revocable or not is regarded as irrevocable.

解：UCP 600 规定,如果信用证没有注明是否可撤销,则当作不可撤销。

4. __F__ A letter of credit not mentioning it is non-transferable will be seen as transferable.

解：信用证只有明确注明是"可转让的(transferable)",才具有可转让信用证的性质,没有注明的应当做不可转让处理。

5. __F__ Using a third currency in collecting payment is the best protection against currency risk for the seller.

解：为尽可能地回避因汇率波动而带来的风险,应选择一种比较稳定的"硬货币"作为支付货币,而未必是第三国货币。

6. __T__ Since under L/C the seller gets payment from a party independent of the buyer, it is the safest mode for him.

解：信用证条件下,卖方是直接从银行获得货款,而无须考虑买方是否能够或愿意支付。因此这种支付方式对于卖方来说最保险。

7. __T__ Open account and payment in advance indicate the minimum and maximum risk for the importer.

解：寄售(open account)通常是指卖方把货物委托给买方代为销售,货物卖出后或定期再收取货款,销售期间货物的风险仍由卖方承担。这种方式支付买方的风险最小。而

预付货款(payment in advance)则要求买方在收到货物之前把货款全部付清,这种方式支付买方的风险最大。

8. __F__ Dishonour only refers to the rejection to the presentation for payment, but not rejection to the presentation for acceptance.

解: 拒绝支付或拒绝进行承兑都统称为拒付。

9. __T__ Under collection though the seller collects payment through banks, it is not guaranteed that he will receive the money as collection is still based on commercial credit.

解: 托收是通过委托银行协助收取货款,银行不承担必须收到货款的责任。所以它还是基于商业信用的一种支付方式。

10. __F__ In international trade clean collection is more frequently used than documentary collection.

解: 光票托收是指卖方已将相关商业单据寄给买方,而只用一张汇票通过银行向买方收款。这种方式一般在关系非常熟悉的贸易商之间使用,不很普遍。贸易实务中跟单托收的方式使用更普遍。

III. Short questions.

1. After Bank X advised exporter Y of the L/C, the shipment was made. When the cargo was on the way, the importer filed for bankruptcy. Is Y out of luck of collecting the payment? Can the opening bank refuse to make reimbursement to the negotiating bank? Why or why not?

答: No, exporter Y does not need to worry about the payment. Because the payment is by L/C, the issuing bank is responsible for making payment regardless of the importer's situation. But the condition is that exporter Y can fulfill all the requirements listed on the L/C. According to UCP 600, a credit constitutes a definite undertaking of the opening bank to pay or to pay at maturity in case of acceptance. Therefore once the stipulated documents are presented to the opening bank and the terms and conditions of the credit are complied with, the opening bank cannot refuse to make reimbursement to the negotiating bank.

2. If an L/C does not indicate whether it is revocable or not, is it revocable? Can a revocable credit be transferable?

答: According to UCP 600, if an L/C does not indicate whether it is irrevocable or not, it will be considered irrevocable. And a transferable L/C must be irrevocable.

3. After a gullible importer paid Bank C against the seemingly correct shipping documents, he went to take the delivery, but found out that the goods were inferior counterfeits. Is Bank C liable under UCP 600? Can the importer do anything in order to recover the loss?

答: Bank C is not liable in this case because UCP 600 stipulates that in credit operations all parties concerned deal with documents, and not with goods, services and/or other performances to which the documents may relate. In order to recover the loss, the importer should rely on the sales contract and seek for solution.

4. An exporter, Wu Co., received an L/C issued by Bank B and confirmed by Bank K. After Wu shipped the goods, Bank B declared bankruptcy. Will Wu have sleepless nights?

答: No, Wu Co. does not need to worry about the payment. When the L/C is confirmed, the confirming bank holds the same definite undertaking as the issuing bank to pay or to pay at maturity in case of acceptance.

5. Does a payment credit differ from a sight credit?

答: A payment credit could be settled by sight payment or deferred payment. In both cases, a draft drawn on the issuing bank may not be necessary. While when a sight credit is used, payment would be made immediately against a sight draft and required commercial documents.

6. Are the following credits transferable? (A) This L/C is assignable; (B) This L/C is transmissible; (C) This L/C is fractionable; (D) This L/C is divisible.

答: According to UCP 600, a credit can be transferred only if it is expressly designated as "transferable" by the issuing bank. Terms such as "divisible", "fractionable", "assignable", and "transmissible" do not render the Credit transferable.

7. Under an anticipatory credit, the exporter made an advance, but disappeared without presenting the documents as required. Who is liable for repayment of the advance?

答: This special clause is required by the applicant, as a result he has to make repayment of the advances if the beneficiary fails to present documents for settlement.

8. Use an example to explain why a back-to-back credit is needed.

答: A back to back credit is normally used by middleperson for the protection of his interest. For example, agent A received a documentary credit from the end buyer B, A can use this credit as a backup to apply for the opening of a new credit in favor of the end supplier C. By doing so A can be sure that neither B nor C would know each other, therefore well protecting A's business confidentiality.

9. What is the major difference between a back-to-back credit and a transferable credit?

答: When a back-to-back credit is used, there actually involve two credits. When a transferable credit is used, operation is based on only one credit.

IV. Case studies.

1. In its offer to a Japanese importer Focus Export Co. quoted "FOB Ningbo JPY210/piece, payment by D/P." Several days later the importer replied "Price accepted. Payment by D/P at 90 days after sight with collecting bank nominated by us." Why did the Japanese importer choose this payment term? Should Focus accept it?

析:案例中提到了两种支付方式:付款交单和见票后 90 天付款交单。付款交单是出口商通过银行渠道在进口商支付货款后把货物的物权凭证等文件交给进口商。进口商在支付货款后才能够拿到单据进而提货。见票后 90 天付款交单则是在单据到达进口国的代收行后,进口商有 90 天的一个期限然后再付款获取单据。但进口商可以通过使用

Trust Receipt（信用收据）来向代收行借单，使其在没有付款的情况下能够拿到单据，以便早日提货获取经济利益。通常情况下，代收行在未经授权的情况下不会轻易同意进口商借单。

答题切入点：1）首先对比两种支付方式的差异，尤其说明后者的特殊性；2）解释日方选择该支付方式是为了通过与之有关系的代收行进行借单，以推迟付款，以利于资金周转；3）说明卖方接受或不接受的选择，并从其对资金回收的急切程度解释其原因。

2. F, a state-owned enterprise, signed a contract to import 1 000 M/T of galvanized steel sheets from a H. K. company. On March 1, a Shanghai bank issued the L/C for USD200 000. On March 24, container shipment was made. On March 25, the negotiating bank in H. K. negotiated the draft along with the shipping documents. On march 26, the opening bank received the "clean B/L" while the sealed container arrived at Shanghai. On March 30, it was found that inside the container were rusted iron drums, rather than the ordered steel sheets. The issuing bank was immediately notified of the fraud, but it could not refuse to take up the documents.

On April 5, F co. uncovered that the commodity specified on the B/L was 50 mm, inconsistent with 50 cm required by the L/C. On April 14, the issuing bank requested the HK bank to exercise the right to recourse. Please comment on the case and provide suggestions.

析： 1）在 3 月 30 日进口方发现货不对证，通知开证行时开证行"could not refuse to take up the document"，这里说明开证行尽管知道货不对证，但如果它认为议付行所提交的单证与信用证相符，开证行必须依照信用证规定的义务行事，即对议付行进行偿付。因为，在信用证的运作下，各方只凭单据操作，而不涉及实际的货物。2）4 月 5 日进口商发现单据有不符点，可以想象的结果就是进口商拒绝赎单付款。此时开证行已向议付行支付了货款，而又遭到进口商以正当理由拒绝赎单付款，它是遭受损失的一方，因此会向议付行提出行使追索权。3）但根据国际商会银行委员会对跟单信用证下追索权的解释，开证行进行的议付是"无追索权的议付"。

答题切入点：1）首先指出本案例中开证行没有追索权，所以会遭受损失。另外进口商虽然没有付款，但实际上也遭受了一定的损失。2）然后进一步说明各方遭受损失的原因。3）最后针对导致损失的原因提出相应的解决建议。

3. FF Company signed a contract to export goods to AA company in Africa. In September FF was notified of the L/C, but the money of account was different from that required by the sales contract. Besides, the goods were not ready for shipment. In November, AA urged FF to deliver the goods. FF requested an L/C amendment and an extension of the shipment date. The next day, AA cabled back, "L/C amended." FF shipped the goods. However, the amended L/C never arrived, and the opening bank refused to pay against the shipping documents. The goods were stored in the warehouse at the port of destination. FF had to pay much rent and insurance. At this time, AA requested D/A at 60 days after sight. Should FF accept it? Is there any lesson to be learnt from this case?

析： 案例中由于 AA 公司没有如约修改信用证，使得 FF 公司提交的单据不符合信用

证的要求,这时作为银行付款承诺的信用证已经失效。买卖双方的支付关系又回到了依靠商业信用的情况。而这时 AA 公司要求使用 60 天期承兑交单(D/A),即是要求卖方同意在买方只做出 60 天期的支付承诺(承兑)而未付款的情况下获得可以提取货物的单据。

答题切入点:1)解释 D/A 的应用特点;2)对 AA 的过往行为进行判断,对其要求 60 天期 D/A 的目的进行分析;3)FF 如果同意采用 60 天期 D/A 可能出现的后果;4)FF 是受损一方,分析其在不同阶段所犯的错误及预防错误的方法。

4. A Chinese bank issued standby Ls/C totaling millions of U. S. dollars, in favor of a U. S. company. These were irrevocable, transferable standby Ls/C valid for one year. When questioned by the supervising agency, the bank stated that these were merely evidence of absorbed foreign investment, "It has no obligation to repay principal and interest, and bears no responsibility, economic or legal, for the funds." Was there any risk for the bank?

析:1)本案例中各方的关系可能是:某中国公司要某美国公司投资某项目,作为完成项目的担保,向银行申请开出一份备用信用证,受益方是美国公司。中国公司在申请信用证的时候可能游说银行,使其相信这只是帮助吸引外资的一个文件,该公司会承担完成项目的责任,而美国公司则负责出资,所以银行不会承担任何风险。中方银行在对备用信用证没有了解的情况下同意该操作。2)备用信用证尽管是一种特殊的信用证,它为申请人提供担保,在申请人未能完成所规定义务的情况下向受益人支付约定的款项;但它的本质还是一份信用证,即在符合条件的情况下开证行对受益人承诺付款义务。3)案例中的开证行对备用信用证了解不透,误解了它所应承担的责任,因此也忽略了它可能承担的风险:当中国公司不能履行其义务时,开证行是要向美国公司支付相应款项的。

答案:Yes. 答题切入点:1)备用信用证的特点;2)信用证使用中开证行的义务;3)案例中如果申请人不能履行义务,开证行的责任。

Chapter Eight

Export Documentation

8

1. Background and Suggestions for Teaching and Learning

1.1 背景知识

在国际贸易实务中,国际贸易虽然是国际商品买卖,但在实际业务中却主要表现为单据的买卖。进出口公司为了及时履行交货义务,并在交货后及时、安全地收汇,必须缮制并审核好各种有关的出口单证,以保证顺利、安全地收汇。单证在国际贸易实务中的重要性可以体现在几个方面:首先,国际贸易中广泛使用的 FOB、CFR 和 CIF 术语,均属凭单交货、凭单付款的象征性交货;其次,国际贸易中广泛使用的信用证支付方式是单据业务,它强调:只要出口商提供符合信用证规定的各种单据,开证行就必须承担付款的责任,至于货物的实际情况,银行不必负责;反之, 货物相符而单据不符,银行则有权拒付货款;此外,即使在跟单托收时,进口商也是凭约定的单据付款或承兑,如单据不符,进口商也可拒付。由此可见,在国际贸易实务中,单证缮制,既是出口商履行合同的基本义务,又是关系到出口商能否安全收汇的重要工作。

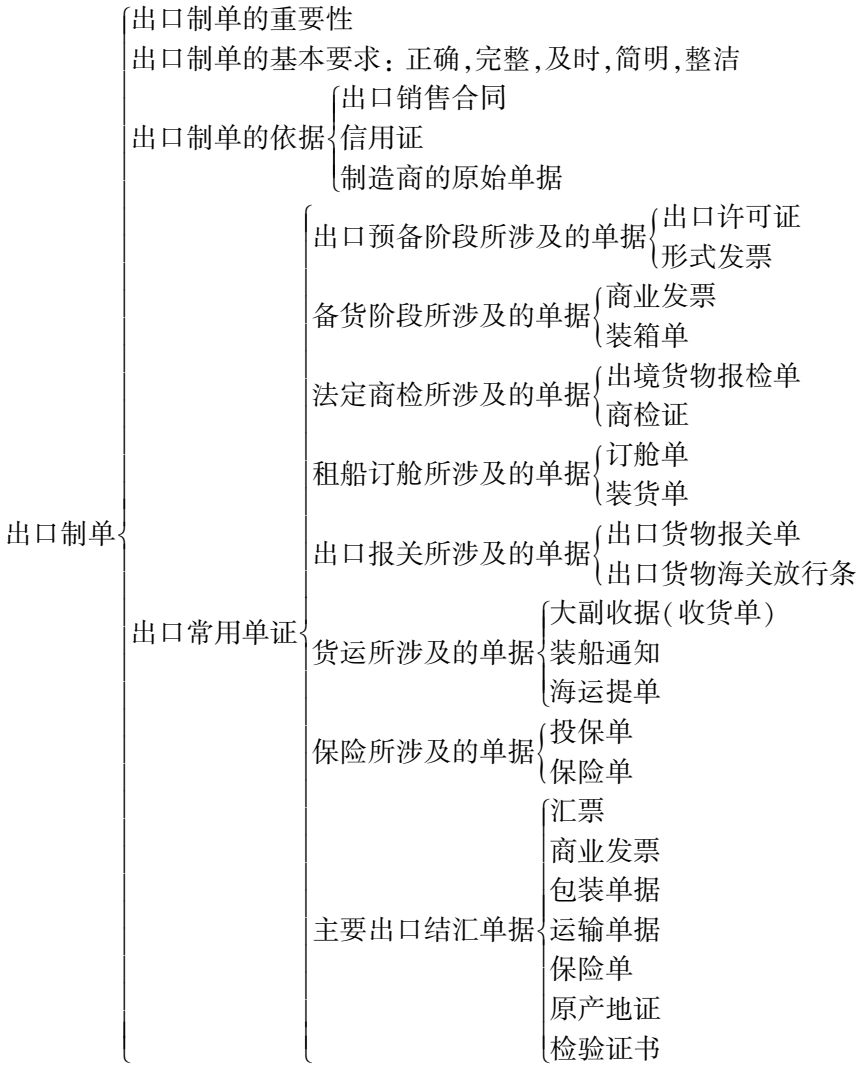
1.2 教学目标与建议

完成本章的教学内容后,学生应掌握以下的内容:

- 制单的基本要求
- 缮制单据的主要依据
- 主要出口单据
- 销售合同中有关单据的条款的制定

这一章节是出口制单,主要介绍出口单据的重要性、缮制出口单据的基本要求、缮制单据的主要依据、主要出口单据以及销售合同中有关单据的条款。主要出口结汇单据是本章的重点。建议用 2~4 学时讲解本章内容。

1.3 知识结构图



2. Learning Points

2.1 单证制作的基本要求

出口单据缮制的五个基本要求是：

• 正确/准确(Correctness)。单据内容既要符合信用证的要求,又要能真实反映货物的实际情况,且各单据的内容不能相互矛盾。

• 完整(Completeness)指一笔业务所涉及全部单据在内容、份数和种类上的完整。凭单据买卖的合同/信用证都会明确要求出口方需提交哪些单据、提交几份、有无正副本

要求、是否需要背书等内容,所有这些都必须得到满足。

• 及时(Promptness)指单据制作的不迟延。要及时制单、审单、交单、收汇。制作单据时多数单据由出口方完成,有些需要相关部门配合完成。

• 简明(Conciseness)单据内容应按信用证要求和国际惯例填写,力求简明,单据中不应出现与单据本身无关的内容。

• 整洁(Cleaness)指单据应清楚、干净、美观、大方,单据的格式设计合理、内容排列主次分明、重点内容醒目突出。不应出现涂抹现象,应尽量避免或减少加签修改。

2.2 缮制单据的主要依据

出口单据缮制的主要依据是买卖合同、信用证及货物的原始单据:

• 买卖合同:买卖合同是制单的基本依据。在出口托收或汇付业务中,所有单据的制作首先以买卖合同为依据。此外,信用证项下出口时,虽然以信用证条款为依据,但有些项目,尤其是信用证未作明确规定的,也必须参照合同条款。

• 凡是信用证结汇项下的单据,必须严格按信用证条款制单。否则银行有权拒付货款。

• 货物的原始单据及其货物的实际情况为准制作单据。单据一定要如实反映货物的情况。一般情况下,制造商或供货商提供的如实反映货物的情况的原始单据也成为制单的依据之一。

当然,所有国际贸易中要求的单据都应符合相关的法律、惯例和规则,因此,较常见的如我国的《合同法》《票据法》《外贸法》《海商法》以及《保险法》,我国缔约参加的《联合国国际货物销售合同公约》,在国际贸易领域影响巨大的 UCP 600、URC 522、INCOTERMS 2010 等,所有这些规定都对制单工作具有非常强的指导意义。

2.3 汇票的缮制和审核要点

汇票是由出票人签发的,要求付款人在见票时或在一定期限内,向收款人或持票人无条件支付一定款项的票据。汇票是国际结算中使用最广泛的一种信用工具。在国际贸易中,主要使用的是跟单汇票(documentary draft),作为出口方要求付款的凭证。制作或审核汇票时应主要注意下列问题。

• 汇票金额:托收项下汇票金额应与发票一致。若采用部分托收、部分信用证方式结算,则两张汇票金额各按规定填写,两者之和等于发票金额。信用证项下的汇票,若信用证没有规定,则应与发票金额一致。若信用证规定汇票金额为发票的百分之几,则按规定填写。这一做法,通常用于以含佣价向中间商报价,发票按含佣价制作,开证行在付款时代扣佣金的情况。

• 付款人名称:托收方式的汇票,付款人为买方。信用证方式下,以信用证开证行或其指定的付款行为付款人。若信用证未加说明,则以开证行为付款人。

• 收款人名称:汇票的收款人应是银行。信用证方式下,收款人通常为议付行;托收方式下,收款人可以是托收行,均做成指示式抬头。托收中也可将出口方写成收款人(已收汇票),然后由收款人作委托收款背书给托收行。

2.4 商业发票的缮制和审核要点

商业发票(commercial invoice)是出口商开立的发货价目清单,是装运货物的总说明。发票全面反映了合同内容。发票的主要作用是供进口商凭以收货、支付货款和进出口商记账、报关纳税的凭据。在不用汇票的情况下(如付款信用证、即期付款交单),发票代替汇票作为付款的依据。

发票没有统一的格式,其内容应符合合同规定,在以信用证方式结算时,还应与信用证的规定严格相符。发票是全套货运单据的中心,其他单据均参照发票内容缮制,因而制作要求正确无误。发票的制作及审核注意主要事项如下:

- 发票抬头人:通常为国外进口商。在信用证方式时,通常为开证申请人。
- 发票开票日期:开票日期不应与运单日期相距太远,但必须在信用证交单期和有效期之内。
- 运输标志:凡来证有指定唛头的,按来证制作。如无规定,由托运人自行制定。以集装箱方式装运,可以集装箱号和封印号码取代。运输单据和保险单上的唛头,应与发票一致。
- 单价和总值:单价和总值必须准确计算,与数量之间不可有矛盾,应列明价格条件(贸易术语),而且总值不可超过信用证的金额,否则,银行可以接受,也有权拒收。
- 附加证明:大致有以下几种:(1)加注费用清单:运费、保险费和 FOB 价;(2)注明特定号码,如进口许可证号;(3)注明原料来源地的证明文句。
- 出单人名称:发票由出口商出具,在信用证方式下,必须是受益人。"UCP 600"规定,商业发票可以只标明出单人名称而不加签署。如需签字,来证中应明确规定,如 signed commercial invoice。

2.5 包装单据的缮制和审核要点

包装单据(packing documents)是指记载或描述商品包装情况的单据,是商业发票的附属单据。它是进口地海关验货、公证行检验、进口商核对货物时的依据之一,用以了解包装件号内的具体内容和包装情况。此外,信用证也常将此类单据作为结汇单据之一。根据不同商品有不同的包装单据,常用的有装箱单、重量单和尺码单。装箱单(packing list)用以表明包装货物的名称、规格、数量、唛头、箱号、件数、重量及包装情况;重量单(weight list)清楚地表明商品每箱毛、净重及总重量的情况,供买方安排运输、存仓时参考;尺码单(measurement list)偏重于说明货物每件的尺码和总尺码,即在装箱单内容的基础上再重点说明每件商品的不同规格项目的尺码和总尺码。如果不是统一尺码应逐件列明。

缮制包装单据应注意的事项如下:

- 包装单据名称应与信用证内规定名称一致,因为包装单据的内容,既包括包装的商品内容,也包括包装的种类和件数,每件毛净重和毛、净总重量,每件尺码和总尺码(体积)。
- 毛、净重应列明每件的毛重和净重,总的毛重和净重数字必须与发票和运输单据、

产地证、出口许可证的数字相符。

• 如果信用证规定要列明内包装情况(inner packing),必须在单据中充分表示出来。

2.6 提单的缮制和审核要点

海运提单的缮制及审核注意的主要事项包括:

• 托运人(shipper):一般即为出口商,也即信用证的受益人,如果开证申请人为了贸易上的需要,在信用证内规定做成第三者提单也可照办,例如请货运代理做托运人。

• 收货人(consignee):该栏又称提单抬头。应严格按信用证规定制作。如以托收方式结算。则一般做成指示式抬头。即写成“To order”或“To the order of ×××”字样。不可做成以买方为抬头的记名提单或以买方为指示人的提单以免过早转移物权。

• 通知人(notify party):这是货物到达目的港时船方发送到货通知的对象,通常为进口方或其代理人。

• 提单号码(B/L No.):提单上必须注明编号,以便核查,该号码与装货单(又称大副收据)或(集装箱)场站收据的号码是一致的。没有编号的提单无效。

• 装运港(port of loading)和卸货港(port of discharge)。应填写具体港口名称。卸货港如采取选择港方式,应全部列明。如中途转船,卸货港填写转船港名称,而目的港应填入“最终目的地”(final destination)栏内。也可在卸货港内填上目的港,同时注明“在××港转船”(W/T at ××)。

• 运费和费用(freight & charges):本栏只填运费支付情况,CFR 和 CIF 条件成交,应填写运费预付(freight prepaid),FOB 条件成交,一般填写运费到付(freight to collect)。程租船一般只写明“AS ARRANGED”(按照约定)。如信用证另有规定,按信用证规定填写。

• 正本提单份数(number of original Bs/L):信用证规定签发,并分别用大小写数字填写,如“(2)TWO”或“(3) THREE”。信用证中仅规定“全套”(full set)正本,习惯做两份或三份正本,但只有一份正本时,一份亦可视为全套正本。

• 提单日期和签发地点:除备运提单外,提单日期均为装货完毕日期,不能迟于信用证规定的装运期。提单签发地点按装运地填列。

2.7 保险单的缮制和审核要点

保险单(insurance policy/certification)是保险人与被保险人之间订立的保险合同的凭证。是被保险人索赔、保险人理赔的依据,在 CIF 或 CIP 合同中,出口商在向银行或进口商收款时,提交符合销售合同及/或信用证规定的保险单据是出口商必不可少的义务。保险单主要内容如下:

• 被保险人,即投保人:在 CIF 或 CIP 条件下,出口货物由出口商申请投保,在信用证没有特别规定的前提下,信用证受益人为被保险人。并加空白背书,以转让保险权益。

• 标记:指运输标志应和提单、发票及其他单据上的标记一致。通常在标记栏内注明“按××号发票”(as per invoice No. ××)。

• 保费及费率:保费及费率一般没有必要在保险单上表示。该栏仅填“AS ARRANGED”。

但来证如果要求标明保费及费率时,则应打上具体费率。

• 承保险别:本栏是保险单的核心内容。它主要规定了保险公司对该批货物承保的责任范围,也是被保险人在货物遭到损失后,确定是否属保险公司责任的根据。本栏应按投保资料缮制,并要严格符合信用证或合同条款的要求。

• 保险单签发日期和地点:保险单的出单日期不迟于提单或其他货运单据签发日期,以表示货物在装运前已办理保险。

2.8 原产地证明

原产地证明(Certificate of Origin)是用以证明货物原产地或 制造地,是进口国海关计征税率的依据。我国出口商品所使用的产地证主要有普通产地证和普惠制产地证两种。

• 普通产地证。用以证明货物的生产国别,进口国海关凭以核定应征收的税率。在我国,普通产地证可由出口商自行签发,或由进出口商品检验局或由贸促会签发。实际业务中,应根据买卖合同或信用证的规定,提交相应的产地证。

• 普惠制产地证(GSP Certificate of Origin)。目前给予我国普惠制待遇的有澳大利亚、新西兰、日本、加拿大、挪威、瑞士、俄罗斯及欧盟 15 国,以及部分东欧国家。凡是向给惠国出口受惠商品,均须提供普惠制产地证,才能享受关税减免的优惠,所以不管来证是否要求提供这种产地证,我出口商均应主动提交。普惠制产地证的书面格式名称为格式A(Form A)。但对新西兰还须提供格式 59A(Form 59A),对澳大利亚不用任何格式,只须在商业发票上加注有关声明文句。在我国,普惠制产地证由进出口商品检验检疫局签发。

2.9 语言点

1) 合同或信用证中的单据条款的语言组织

在国际货物贸易中,对单据的要求一般包括单据的种类(名称)、单据的分数、单据的签发,有时还有单据加注的内容。

单据的种类(名称):直接写出。如:commercial invoice、bill of lading 等。

单据的份数:相应的英文是 in duplicate(一式二份);in triplicate(一式三份);in quadruplicate(一式四份);in quintuplicate(一式五份);in sextuplicate(一式六份);in septuplicate(一式七份);in octuplicate(一式八份) or in nonoplicate(一式九份)或者是 in two copies;in three copies;in four copies and so on.

单据的签发:一般用短语 signed by ××× 或 issued by ×××引出。如:Quality Inspection Certificate *issued by* CIQ

单据加注的内容:通常用 indicating, stating or marking 引出。如 Bill of Exchange indicating both contract number and L/C number.

例:

Signed commercial invoice in triplicate indicating the contract number

(签名商业发票一式三份,注明合同号码)

Packing list in duplicate, indicating gross weight and net weight, measurements and

quantity of the package

(装箱单一式两份,标明每包的毛重、净重、体积及数量)

Weight and quality certificate in triplicate indicating the number of bags shipped, total gross and net weight, packing, actual quality analysis result issued by CIQ.

(中国商品检验检疫局签发的重量和品质证一式三份,标明发运的包数、总毛重、总净重、包装以及实际的品质分析结果)

3. Solutions to Exercises

I. Multiple choices.

1. Under a _____ contract with payment by L/C, the exporter has to go through the comparatively more complicated procedure of documentation.

A. EXW B. FOB/FCA C. CFR/CPT D. CIF/CIP

解: 在国际货物贸易中,单据往往起到卖方履行责任义务的凭证的作用。与其他合同相比,在履行 CIF/CIP 术语合同时,卖方的责任和义务是最多最大的,因此所交付的单据也是最多的。故答案为 D。

2. If a transaction is concluded on _____ term, the exporter is obliged to obtain an insurance policy or certificate.

A. EXW B. FOB/FCA C. CFR/CPT D. CIF/CIP

解: 根据《国际贸易术语解释通则 2020》,按照 CIF 或 CIP 成交时,为货物办理运输保险并支付保费是卖方的责任义务。故答案为 D。

3. For all export transactions, documents required need to be prepared largely on the basis of the _____.

A. sales contract B. letter of credit

C. commercial invoice D. packing list

解: 买卖合同是制单的基本依据。在出口托收或汇付业务中,所有单据的制作首先以买卖合同为依据。此外,信用证项下出口时,虽然以信用证条款为依据,但有些项目,尤其是信用证未作明确规定的,也必须参照合同条款。故答案为 A。

4. A(An) _____ is the first document a seller has to prepare when he intends to export commodities that are under export control of his country.

A. commercial invoice B. export license

C. pro forma invoice D. customs invoice

解: 出口许可证管理是根据国家的法律和政策,对出口经营权、经营范围、贸易国别、出口货物品种、数量、技术及其相关产品等实行全面管理、有效监测、规范货物出口许可的制度。当出口企业出口这些货物时,均需到指定的发证机构申领出口许可证,并在指定的口岸报关。故答案为 B。

5. (An) _____ is a doucument certifying the origin of goods or the place /county of manufacturing.

A. commercial invoice　　B. inspection certificate

C. packing list　　D. certificate of origin

解：原产地证主要供进口海关掌握进口货物的原产地国别,以采取不同的国别政策;同时也是决定进口税率的依据,或对某些国家或某些商品采取控制进口额度的依据。故答案为 D。

6. To clear the commodity for export customs, the seller should fill out a (an) _____ as an application which will be submitted to the Customs or relative authorized institutions.

A. commercial invoice　　B. export license

C. customs declaration　　D. customs invoice

解：报关是指进出口货物收发货人、进出境运输工具负责人、进出境物品所有人或者他们的代理人向海关办理货物、物品或运输工具进出境手续及相关海关事务的过程,包括向海关申报、交验单据证件,并接受海关的监管和检查等。出口商办理报关,必须填写出口货物报关单,提供出口合同副本、发票、装箱单或重量单、商检书及其他有关文件。故答案为 C。

7. _____ is a document made out by the seller as a supplementary document to the commercial invoice to make up the deficiency of an invoice by giving all the necessary particulars of the goods.

A. Consular invoice　　B. Pro forma invoice

C. Customs invoice　　D. Packing list

解：装箱单是发票的补充单据,它列明了信用证(或合同)中买卖双方约定的有关包装事宜的细节,便于国外买方在货物到达目的港时供海关检查和核对货物。故答案为 D。

8. A _____ is dispatched by the carrier or the agent to inform the exporter of the particulars of shipment arrangement after shipping space is booked.

A. booking note　　B. bill of lading

C. shipping advice　　D. shipping order

解：货运服务机构、船公司或其代理人在接受托运人的托运申请后,签发给托运人装货单(Shipping Order S/O)。装货单俗称下货纸。其作用有三:一是通知托运人货物已预订的航次、船名,及装货日期等,让其备货装船;二是便于托运人向海关办理出口申报手续,海关凭以验放货物;三是作为命令船长接受该批货物装船的指示文件。故答案为 D。

9. A(An) _____ is a document indicating the results of the inspection of the goods in terms of the quality, quantity or any other element that has been specified.

A. inspection certificate　　B. inspection application

C. certificate of origin　　D. inspection certificate of quality

解：进出口商品经过商检机构进行检验或鉴定后,由该检验机构出具的书面证明称为“商品检验证书”。此外,在交易中如果买卖双方约定由生产单位或使用单位出具检验证明,则该证明也可起到检验证书的作用。在国际贸易中,商检证书是卖方所交付货物的品质、重量、数量、包装及卫生条件等是否符合合同规定的依据。故答案为 A。

10. In international trade practice, stipulations concerning documents are an indispensable part of _____.

A. the sales contract

B. the documentary L/C

C. either the sales contract or the documentary L/C

D. both the sales contract and the documentary L/C

解：在国际货物贸易中,虽然合同对合同货物有详尽的规定条款,但不一定对有关的单据作出规定;而跟单信用证业务的特点决定了开证行必须仅凭相符单据对外付款,因此,有关单据的条款和规定是信用证不可缺的一部分。故最佳答案为 B。

II. True or false statements.

1. __F__ Insurance Policy is one of the basic documents required by buyers for all transactions on FOB, CFR and CIF basis.

解：在以 FOB 和 CFR 的价格术语成交时,卖方没有购买海上运输保险的义务,所以买方不能要求卖方提供保单。

2. __F__ Export documents should be made out based on the information either in the sales contract or in the L/C.

解：买卖合同是制单的基本依据。在出口托收或汇付业务中,所有单据的制作首先以买卖合同为依据。此外,信用证项下出口时,虽然以信用证条款为依据,但有些项目,尤其是信用证未作明确规定的,也必须参照合同条款。

3. __T__ The commercial invoice serves as a record of the essential details of a transaction.

解：商业发票是出口方向进口方开列发货价目清单,是买卖双方交易的记录,也是记账的依据,也是进出口报关交税的总说明。商业发票是一笔业务的全面反映,内容包括商品的名称、规格、价格、数量、金额、包装等,同时也是进口商办理进口报关不可缺少的文件,因此商业发票是全套出口单据的核心,在单据制作过程中,其余单据均需参照商业发票缮制。

4. __F__ Export is possible only after the commodities have been inspected.

解：属于法定检验的出口商品,未经检验合格者不得出口;未向商检机构报验或检验不合格的不能获海关验放,即使进口也不准销售与使用。但不属于法定检验的出口商品,不一定要经过检验才允许出口。

5. __T__ Commodities are not allowed to be loaded on the ocean vessel until they have been cleared for customs.

解：对于一般出口货物,在发货人或其代理人如实向海关申报,并如数缴纳应缴税款和有关收费后,海关在出口装货单上盖“海关放行章”,出口货物的发货人凭以装船起运出境。

6. __F__ A Booking Note is a form which is to be filled out by the carrier providing all the necessary particulars about the shipment to facilitate booking shipping space or chartering.

解：定舱单是托运人(一般是出口商)向船公司订舱位时所填写的单子。要注明货物重量、体积、件数、出运货物的品名、发货时间、发运港、目的港以及发货人与收货方的公司资料等。

7. __T__ The amount on a Bill of Exchange (draft) must be exactly the same as the amount shown in the relevant commercial invoice.

解：汇票(Bill of Exchange,draft)是出票人签发的,委托付款人在见票时或者在指定日期无条件支付确定的金额给收款人或者持票人的票据。而商业发票是出口方向进口方开列发货价目清单,是买卖双方交易的记录,也是记账的依据。因此,汇票金额一般与发票金额一致。

8. __F__ If there is a discrepancy between the amount on a draft and that the L/C, this draft is not acceptable to the issuing bank.

解：一般情况下汇票金额应与信用证一致。但指定银行(一般是指交单行)按照开证行的指示也可以接受小于信用证金额的汇票,但不得超额议付。如溢短装情况下,不可以超过信用证金额,但可以少于信用证金额,或在分批装运情况下可以少于信用证金额,但各批装运金额之和不超过信用证总计金额。因此,汇票金额可以等于也可以小于信用证金额。

9. __T__ According to UCP 600 Art 18, commercial invoice must be issued by the beneficiary named in the L/C.

解：UCP 600 第十八条规定,商业发票必须由受益人出具。

10. __F__ A Certificate of Origin can be used to certify the time the export commodities are produced.

解：原产地证主要供进口海关掌握进口货物的原产地国别,以采取不同的国别政策;同时也是决定进口税率的依据,或对某些国家或某些商品采取控制进口额度的依据。

III. Explain the following terms.

1. export license

答：An Export License is the first document a seller has to prepare when he intends to export commodities that are under export control of his country.

2. commercial invoice

答：A Commercial Invoice is the exporting firm's invoice, addressed to the foreign importer, describing key transaction details particularly the total value and claiming for payment. It is used as the foundation for keeping accounts and making declarations to the customs. It is often one of the documents required for payment settlement. The Commercial Invoice serves as a record of the essential details of a transaction.

3. packing list

答：A packing list is a document made out by the seller stating the detailed content of each individual shipment. It is a supplementary document to the commercial invoice used to make up the deficiency of an invoice by giving all the necessary particulars of the goods.

4. GSP Certificate of Origin

答: Generalized System of Preferences Certificate of Origin (GSP Certificate of Origin), as well as the Certificate of Origin, is one of the normally two types of certificates of origin used in international trade. The GSP Certificate of Origin is a special type of certificate of origin used to obtain the preferential customs duty treatment imposed by some developed countries on import commodities from some developing countries.

5. export customs clearance

答: Export goods cannot be exported unless they are cleared for export customs. Export customs clearance is issued by the customs or the authorized institutions evidencing that the export commodities X are released for export.

IV. Short questions.

1. What are the basic requirements for export documentation?

答: Generally speaking, export documentation should meet the following basic requirements: correctness, completeness, conciseness, cleanness and promptness.

- Documents are correct and accurate if the content (including the exact words used) conforms to that in the letter or credit and format of the documents is in line with the requirement. Aside from these, correctness is met when the right types of documents are prepared and the right number of the originals and duplicates are presented.
- To be complete, all necessary documents (including the types and number of originals and duplicates) are prepared and presented in a complete set.
- To achieve concise, the seller shall make sure that all documents should avoid redundant, unnecessary or ambiguous words or expressions.
- To be clean, documents should bear no marks of correction on the face.
- To be prompt, the seller should then prepare the documents in time and present them within the time for presentation stipulated in the letter of credit. This lives up to the requirement of promptness.

2. What are the information sources for export documentation?

答: The sales contract, the L/C and original information obtained from the original documents provided by manufacturers may be the information criteria for export documentation.

- The sales contract is the basis of any other documents produced and all documents must be made out in strict conformity with the contractual terms.
- If a transaction is made with payment by L/C, the credit will list all the documents required as the condition for the issuing bank to hold the liability of payment, independent of the importer.
- Contents of documents should be subject to original information obtained from the original documents provided by manufacturers (eg. Packing list). These documents become the information bases for documentation.

3. What documents is the exporter normally asked to submit when he charters or books shipping space?

答: When chartering or booking shipping space for the carriage of export goods, the exporter is normally asked to submit a booking note. A booking note is a form which is to be filled out by the exporter which provides the carrier or the shipping agent with all the necessary particulars about the shipment. The supporting documents such as copy of the sales contract, invoice and packing list may also be required by the carrier.

4. What are the main documents required for the negotiation of payment?

答: The main documents required for the negotiation of payment settlement generally include the commercial invoice, the packing list, the bill of lading, the insurance policy, etc. Apart from these documents, there are also other types of documents required by the buyer and submitted to the bank for negotiation. In addition to the submission of the above documents, the exporter he may also fill out a bill of exchange (a draft).

5. What should the sellers do to ensure that the documents required can be presented correctly, completely and promptly?

答: Correctness, completeness, and promptness are the basic requirements for export documentation.

- To achieve correct and accurate if the content (including the exact words used) conforms to that in the letter or credit and format of the documents is in line with the requirement. Aside from these, correctness is met when the right types of documents are prepared and the right number of the originals and duplicates are presented.
- To be complete, all necessary documents (including the types and number of originals and duplicates) are prepared and presented in a complete set.
- To be prompt, the seller should prepare the documents in time and present them within the period for presentation stipulated in the letter of credit. This lives up to the requirement of promptness.

V. Case studies.

1. Company A has contracted to export "Cider" to Italy on CIF terms with payment by irrevocable L/C at sight. The goods are prepared based on the contract and the name "Cider" is used. However, as the name in the coming L/C is "Apple Wine", "Apple Wine" is adopted in all the documents prepared by Company A so as to ensure that the documents strictly conform to the L/C stipulations. On arrival at the port of destination, the goods are detained by the Italian Customs due to the discrepancy between the documents presented and the covering goods. Consequently, the Italian buyer claims for compensation. Is Company A liable for the Buyer's loss? What should Company A have to do to avoid such a dispute?

析: 本题的解题要点:1)"Cider" 和 "Apple Wine"苹果酒的英文名称;2)酒的内外包装用的是"Cider" 而信用证上用的是"Apple Wine",名称的不一致造成了卖方缮制单

据的两难:单据上的名称不是与信用证不符,就是与货物所标注的名称不符;3)海关扣押罚款的理由是买方报关的单据的货名与货物所标注的名称不符。

答案:A 公司应负责赔偿买方的损失。要避免这种争议,卖方理应清楚出口货物的英文名,如来证货名与实际不符,可要求对方改证,或自己更改货物上的英文名称。这样不仅做到单证(单据与信用证)相符,还可以做到货物和单据相符。

答题切入点:单证相符,货单相符。

2. Company B concluded with Company D an export contract on CIF with L/C payment. The contract stipulated that shipment be made during August. But the time for the arrival of the L/C was not specified. By the end of July, the L/C hadn't arrived, Company B had to urge Company D repeatedly to open the L/C. On August 5th, a copy of the L/C application was provided by Company D to assure B of the issuance of the L/C. In order to make delivery within the stipulated time period, Company A made arrangement for shipment. Finally the original L/C arrived on August 28th. Even though documents required in the original L/C were different from those in the contract clause, B overlooked the discrepancy and, after shipment, prepared the documents according to the contract. As a result, the issuing bank refused to make payment to Company B. 1) Can the bank reject payment to Company B? 2) What are the lessons?

析:本题的解题要点:1)D 公司可提供信用证的申请书,并不说明信用证的开出,即使有开出,也并不说明开出的信用证的条款无误。2)这里出现的问题是:信用证的条款与合同条款有不符。

答案:1)开证行可以拒付货款给 B 公司;2)B 公司的教训是:一定要在收到由通知行通知的信用证,并且审核其条款无误后,才可发货。

答题切入点:1)对跟单信用证的理解;2)信用证付款条件下的制单要求。

Chapter Nine

Inspection, Claim, Force Majeure and Arbitration

1. Background and Suggestions for Teaching and Learning

1.1 相关背景知识

本章的内容涉及商检和纠纷的处理。商检是进出口商品的必经步骤,如何办理进出口商品检验?若是出口检验,首先由报验人填写“出口检验申请书”,并提供有关的单证和资料,如合同、信用证、厂检结果单正本等。商检机构受理后会随机抽样检验。对检验合格的商品商检机构签发检验证书,或在“出口货物报关单”上加盖放行章。出口企业在取得检验证书或放行通知单后,在规定的有效期内报运出口。

根据进口商品登记规定,进口商品的检验分两大类。一类是列入《进出口商品检验种类表》和合同规定由我国商检机构检验出证的进口商品。进口商品到货后,由收货、用货或其代理接运部门立即向口岸商检机构报验,填写进口货物检验申请书,并提供合同、发票、提单、装箱单等有关资料和单证,检验机构接到报验后,对该批货物进行检验,合格后,在进口货物报关单上加盖印章,海关据此放行。另一类是不属上一类的进口商品,由收货、用货或代理接运部门所在地区的商检机构申报进口商品检验,自行检验或由商检机构检验,自行检验须在索赔期内将检验结果报送商检机构,若检验不合格应及时向商检机构申请复验并出证,以便向外商提出索赔。商检受《中华人民共和国进出口商品检验法》的约束。

在国际贸易中,情况复杂多变,买卖双方签订合同后,由于种种原因,使合同没有履行,这就引起了交易双方间的争议。通常在合同中会预先制定索赔条款,如果是大宗买卖,除索赔条款外,还会制定罚金条款。争议出现后可通过友好协商、调解、仲裁和

诉讼等方法得以解决,其中尤以仲裁为主要的方式。对于仲裁,国内和国际都有相关的法律进行约束,我国国内主要是《仲裁法》,涉及国际商事仲裁则应遵循仲裁的国际公约,如联合国国际贸易法委员会主持制订的《国际商事仲裁的国际公约》、《仲裁规则》和《调解规则》等。

1.2 教学目标及建议

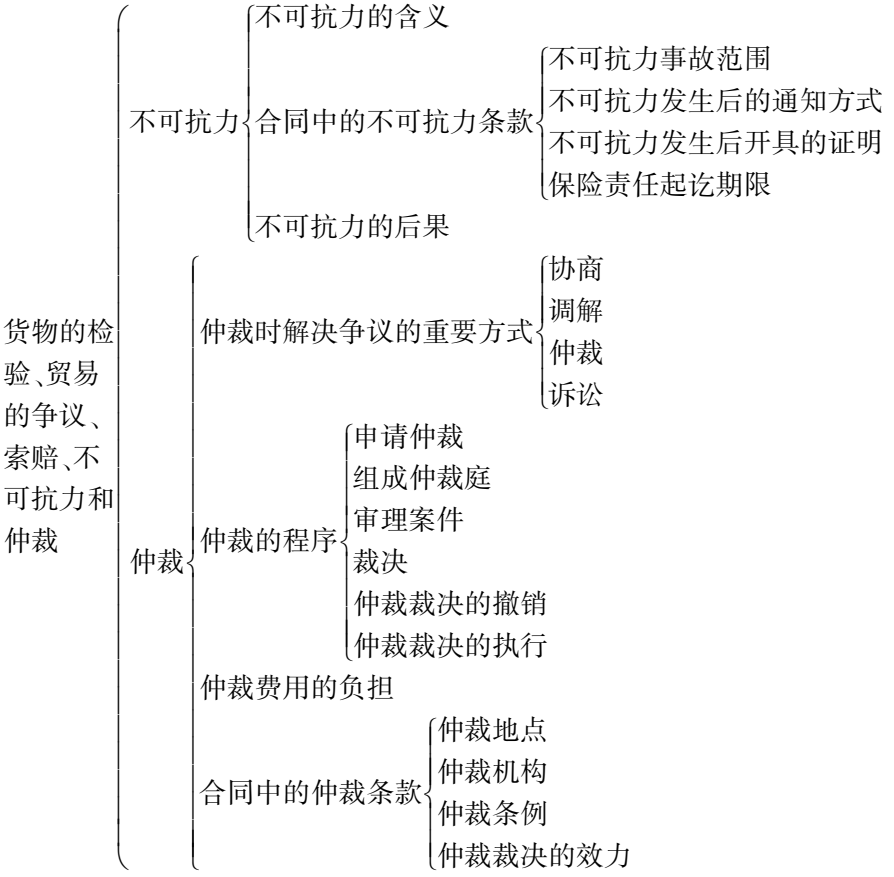
完成本章的教学内容后,学生应掌握以下的内容:

- 合同中检验条款的制定
- 违约的形成,索赔和理赔
- 合同中索赔条款的制定
- 不可抗力的后果以及如何在合同中制定不可抗力条款
- 仲裁在解决争议和索赔中的作用
- 仲裁中所要考虑的问题
- 合同中如何制定仲裁条款

这一章节主要介绍货物检验以及国际贸易争议的处理,其中争议的处理是重点,主要包括争议产生的形式、索赔的条件和理赔的方法、不可抗力条款的制定和不可抗力的后果,以及解决争议的四种方式,仲裁是其中最重要的一种方式。本章内容比较琐碎,建议安排 6-8 个学时。

1.3 知识结构图

- 货物的检验、贸易的争议、索赔、不可抗力和仲裁
  - 货物的检验
    - 检验时间和地点的规定
      - 出口港(验)检验
      - 进口港(地)检验
      - 出口港(验)检验,进口港(地)复检
    - 检验机构
      - 检验机构种类:官方机构、非官方机构
      - 检验机构作用:检验、监督控制、调查
    - 检验标准
      - 国家规定的强制性检验标准
      - 合同规定的检验标准
      - 生产国检验标准、国际检验标准
    - 检验的证书
  - 货物的检验
    - 合同中的检验条款
      - 检验的标准
      - 检验的时间和地点
      - 检验机构名称
      - 检验的项目
      - 检验证书的名称
  - 争议和索赔
    - 争议与索赔的含义
    - 合同中的索赔条款
      - 异议与索赔条款
      - 罚金条款



2. Learning Points

2.1 货物检验的时间和地点的规定

至于商品检验的时间和地点,根据国际上的习惯做法和我国外贸实践,一般有三种:装运港检验、目的港检验和装运港检验、目的港复验。装运港检验是由卖方委托的出口地检验机构对商品的品质和重量等进行检验,出具的检验证书作为交货的最后依据,买方即使在进口地再进行复检,也无权向买方提出异议,因此对卖方极为不利。目的港检验,则以进口地买方委托的检验机构对商品进行检验后出具的检验证书作为交货的最后依据,买方可凭检验证书向卖方提出到货品质、重量(数量)的任何异议,卖方不得拒绝,因此对卖方不利。装运港检验、目的港复检,即卖方可在装运时,凭装运地商检机构出具的检验证书,作为向银行议付货款的单据之一,但不作为货品品质、重量(数量)等的最后依据。货到目的港后,买方对货品进行复检,复检后发现货物的品质、重量(数量)等与合同规定不符,可向卖方提出异议并索赔。这种做法较为公平,符合国家贸易的习惯,是国际贸易中常用的方法。

2.2 什么是ISO9000?

“ISO”是“International Organization for Standardization (国际标准化组织)”的简称,总部设于瑞士日内瓦,设立的目的在于推动与制定国际性标准,以作为各国与企业遵循的依据。

“ISO”已颁布了10 000多项产品与技术标准。ISO9000标准是由国际标准化组织所颁布的编号以9为主的一系列质量管理标准。任何标准需经过75%会员的同意,方得由ISO颁布。颁布后的标准,原则上每五至七年会修订一次。标准并非强制性要求,但若各国政府认为有必要,可以用法令的形式规定企业需遵循哪些标准。同样,任何机构也可强制要求其会员或供应商依标准作业。

ISO9000是被全球100多个国家认可的质量管理体系标准。由于它能提供一种大家认可的国际化标准,避免了重复检验的费用和麻烦,而且也能有效地杜绝由于标准不统一而产生的纠纷,因此是国际贸易货物检验中常用的标准。

2.3 违约的规定

各国法律对违约(breach of contract)都有不同的规定,但根据《联合国国际货物销售合同公约》(CISG)的规定,违约分为根本性违约和非根本性违约两种。所谓根本性违约,是指“一方当事人违反合同的结果,如使另一方当事人蒙受损失,以至于实际上剥夺了他根据合同有权期待得到东西”。不构成根本性违约的情况,均视为非根本性违约。构成根本性违约的,受害方可解除合同,否则只能请求损害赔偿。对于什么情况下才能解除合同,《中华人民共和国合同法》第94条规定:1)违约必须导致合同的目的不能得以实现,即违约必须造成严重的后果,使对方期望的目的不能实现;2)一方延迟履行合同,经催告后在合理期限内仍未履行,则守约方可要求解除合同义务。一般,解除合同必须向对方发出通知,宣告合同无效。

2.4 索赔条款的制定

买卖合同中的索赔条款有两种类型:一是异议与索赔条款(discrepancy and claim clause),二是罚金条款(penalty clause)。异议与索赔条款,多用于一般商品的买卖合同中,主要适用于交货品质、重量(数量)等方面的违约行为,这类赔偿的金额不是预先决定的,而是根据货损、货差的实际情况经检验调查后确定的。在大宗商品和机械设备的商品交易中,除订明异议和索赔条款之外,再另订罚金条款,罚金条款规定当一方未能履行合同义务时,应向对方支付一定数额的约定金额,以补偿对方的损失,因此,罚金亦称“违约金”。罚金条款一般适用于卖方延期交货,或者买方迟开信用证或延期接货等场合。罚金数额根据违约时间的长短而定,同时还规定最高限额。不同国家的法律对于罚金条款的规定不同,在我国的出口合同中,除少数特殊情况外,一般不订罚金条款。

2.5 不可抗力条款应注意的事项

不可抗力(force majeure)是合同中的一个条款,也是一项法律原则,必须同时满足下列条件才能认定是不可抗力:1)意外事故必须发生在合同签订之后;2)不是因为合同当

事人双方自身的过失或疏忽而导致;3)意外事故是当事人双方不能控制的。

当不可抗力事故发生后,合同当事人在援引不可抗力条款和处理不可抗力事故时,应注意以下事项:

1) 发生事故的一方当事人应按约定期限和方式及时将事故情况通知对方,对方也应及时答复。

2) 双方当事人都要认真分析事故的性质,看其是否属于不可抗力事故的范围。

3) 发生事故的一方当事人应出具有效的证明文件,作为发生事故的证据。

4) 双方当事人应按约定的处理原则和办法进行协商处理,以减少不可抗力事件带来的不良后果。

发生了不可抗力事故之后,遭受事故的一方可以免除违约赔偿的责任。至于合同是否需要继续履行,则可能有两种情况:即延期履行合同或解除合同,根据事故对履行合同的影响程度而定。

2.6 仲裁的优越性及其仲裁协议的作用

仲裁方式(arbitration)既不同于协商(negotiation)和调解(mediation),又不同于诉讼(litigation)。因为协商和调解强调自愿性,双方都同意才能进行。而诉讼不存在自愿问题,诉讼的提起可以单方面进行,审理后作出的判决也具有强制性。仲裁方式既有自愿性一面,又有强制性一面。自愿性主要体现在仲裁的提起,要有双方达成的协议;强制性原则体现在仲裁裁决是终局性的,双方必须遵照执行。对于双方当事人来说,仲裁比诉讼具有较大的灵活性,因为仲裁员不是由国家任命而是由双方当事人指定的。而且仲裁员一般都是贸易界的知名人士或专家,比较熟悉国际贸易业务,处理问题一般比法院迅速及时,费用也比较低。此外,比起诉讼,仲裁对于买卖双方的贸易关系的伤害相对较少。正是由于这些原因,当争议双方不能通过友好协商解决问题时,一般都愿意通过仲裁解决。

在贸易合同中,通常会制定仲裁的协议,它的作用是:1)约束双方当事人只能以仲裁方式解决争议,不得向法院起诉;2)排除法院对有关案件的管辖权,如果一方违背仲裁协议,自行向法院起诉,另一方可根据仲裁协议要求法院不予受理,并将争议案件退交仲裁庭裁断;3)使仲裁机构和仲裁员取得对有关争议案的管辖权。

2.7 仲裁程序

各国仲裁机构的仲裁规则对仲裁程序都有明确规定。按我国仲裁规则的规定,基本程序如下:

申请仲裁:申请人应提交仲裁协议和仲裁申请书,并附交有关证明文件和预交仲裁费。仲裁机构立案后应向被诉人发出仲裁通知和申请书及附件。被诉人可以提交答辩书或反请求书。

指定仲裁员组成仲裁庭(arbitration tribunal):当事人双方均可在仲裁机构所提供的仲裁员名册中指定或委托仲裁机构指定一名仲裁员,并由仲裁机构指定第三名仲裁员作为首席仲裁员,共同组成仲裁庭。如果规定只有一个仲裁员,此仲裁员可由双方当事人共同指定或委托仲裁机构指定。

仲裁审理(hearing an arbitration case):仲裁审理案件有两种形式:一种是书面审理,也称不开庭审理,根据有关书面材料对案件进行审理并作出裁决,海事仲裁常采用书面仲裁形式。另一种是开庭审理,这是普遍采用的一种方式。仲裁庭审是不公开的,以保护当事人的商业机密。

作出裁决(award):仲裁庭根据仲裁审理作出裁决书,裁决是终局性的,对双方当事人都有约束力,必须依照执行,任何一方都不许向法院提起起诉要求变更裁决。

申请撤销裁决:如果当事人一方有证据认为仲裁程序不当,证据不足,或仲裁员有受贿等情况的,他可以申请撤销裁决。

向法院申请强制执行:当仲裁一方当事人不能自觉履行仲裁裁决要求其承担的义务时,另一方当事人可申请法院执行仲裁裁决,法院依照法定程序,强制被执行人履行仲裁裁决所确定的义务。

2.8 语言点

1)违约的英文表达

作动词:breach/violate/break a contract

A seller may be considered to have *breached a contract* if he fails to make the delivery of the goods within the shipment time stipulated in the contract.(卖方如果没能在合同规定的装运期内交货,他可能就构成违约。)

A buyer may *violate a contract* if he fails to open the relevant L/C within the stipulated period under an L/C payment term.(在以信用证为支付条款的合同中,如果买方未能在规定的期限内开立相关信用证,他就违约了。)

名词形式的表达形式有:breach of contract, violation of a contract, repudiation of a contract, infringement of a contract

Breach of contract means the refusal or failure by one party of a contact to fulfill an obligation imposed on him under that contract.(违约是指合同的一方拒绝或未能履行此合同中规定的属于他的责任或义务。)

In this instance, the injured party may respond to a complete *repudiation of the contract* by terminating it.(在此情况下,受损的一方可以以对方完全违约为由终止合同。)

2)内容 A 与内容 B 相一致的几种表达方法

- in accordance with

Under a negotiation credit, the issuing bank undertakes to reimburse a negotiating bank if that bank 'negotiates' the beneficiary's documents *in accordance with* the credit's terms.(在议付信用证的条件下,如果议付行是在核对受益人提交的单据与信用证条款一致的情况下议付款项的话,开证行应向议付行偿付相应款项。)

- in conformity with

The issuing bank is bound to reimburse the negotiating bank against documents appearing on their face to be *in conformity with* the terms and conditions of the credit.(只要单据在表面上与信用证的条款相一致,开证行必须向议付行偿付款项。)

• in line with

The exporter shall prepare the goods *in line with* the name, quality, quantity, packing and marking required in the contract. (出口商应备妥货物,使其与合同所规定的货名、质量、数量、包装和标志相一致。)

• in compliance with/in consistence with

The seller has to check very carefully so that all documents for a transaction should not only be *in strict compliance with* the stipulations in the relevant contract and letter of credit but also be *in consistency with* each other. (卖方必须仔细核对,以确保交易的所有单据不仅与相关合同和信用证的规定完全一致,而且还必须确保各单据之间的一致性。)

3) 索赔和理赔的英语表达

索赔和理赔是保险中的概念,前者是指受损方向违约方提出损害赔偿的要求,而后者是违约方对受损方所提出的索赔要求予以受理并进行处理,可见索赔和理赔实际上是一个问题的两个方面。对受损方而言,称为索赔;对违约方而言,称作理赔。

在英语中,索赔通常用 claim 表达, 相关的词语有 claimant(索赔人), claimee(被索赔人), claim statement(索赔清单)等等。理赔的英文表达短语有 claim settlement,而 claim settling agent 是理赔代理人。但正因为索赔和理赔是一个问题的两个方面,指代的是同一件事情,因此理赔很多也是用 claim 表达的,比如:claim surveying agent (理赔公证行),claim adjuster (理赔理算人),claims department (理赔部),claims expenses(理赔费用)等等。

3. Solutions to Exercises

I. Multiple choices.

1. The disagreement resulted from one party of a transaction totally or partially unable to perform the obligation and liability stipulated in the contract is _____.

A. claim　　B. dispute

C. breach of contract　　D. settlement of disputes

解: 争议(dispute)是交易的一方认为对方未能部分或全部履行合同规定的责任与义务而引起的纠纷。而违约(breach of contract)则是产生争议的原因;索赔(claim)是指遭受损害的一方在争议发生后,向违约方提出赔偿的要求;而争议的解决(settlement of disputes)则是买卖双方解决争议的结果。故答案为 B。

2. Which of the following may possibly result in disputes between sellers and buyers?

A. Breakage of the package.　　B. Rising of price.

C. Fluctuation of exchange rate.　　D. Quota.

解: 四个答案中的 B 价格上升、C 汇率变动是由市场因素决定的,而 D 配额是政府规定,这三项均不是买卖双方的责任。只有答案 A 包装破损(breakage of the package)可能是卖方包装不足或粗暴搬运所致,从而使卖方不能完全履行合同规定的有关包装的责任,导致贸易纠纷的产生。故答案为 A。

3. Which of the following is a clause in a contract and meanwhile a law itself?

A. Arbitration Clause. B. Claim Clause.

C. Dispute Clause. D. Force Majeure Clause.

解：四个选择中的 A 仲裁(arbitration)、B 索赔(claim)和 C 争议(dispute)都只是买卖合同中订立的条款,只有 D 不可抗力(force majeure)既是合同中的一项条款,也是一项法律原则,尽管在国际贸易条约和各国法律上的叫法不一,如英美法中叫“合同落空”,大陆法系国家称为“情势变迁原则”或“契约失效原则”,但其精神大体相同,主要包括以下几点:(1) 意外事故必须发生在合同签订之后;(2)不是因为合同当事人双方的自身的过失或疏漏而导致;(3)意外事故是当事人双方不能控制的,无能为力的。故答案为 D。

4. The main arbitration body in China is _____.

A. MOFTEC B. CCPIT C. CIETAC D. ICC

解：要做对此题,首先应熟悉这些简称相对应的机构。MOFTEC (The Ministry of Foreign Trade and Cooperation) 是我国原对外贸易经济合作部简称, CCPIT (China Council for Promotion of International Trade)是中国国际贸易促进委员会的简称,CIETAC (The China International Economic and Trade Arbitration Commission)中国国际经济与贸易仲裁委员会的简称, ICC(International Chamber of Commerce)是国际商会的简称,故根据题意,答案为 C。

5. According to usual practice, the penalty of a contract shall not exceed _____ of the total value of the goods.

A. 3% B. 4% C. 5% D. 5.5%

解：罚金条款一般使用于卖方延期交货或买方迟开信用证等场合。按一般惯例,罚金的数额大小是以违约时间的长短而确定的,同时还规定最高限额,最高限额一般不超过货价的 5%。故答案为 C。

6. Force Majeure Clause is a clause that mainly _____.

A. protects the right of the seller

B. protects the right of the buyer

C. enables the seller to avoid his contractual obligations

D. enables the buyer to avoid his contractual obligations

解：不可抗力(force majeure)是指在货物买卖合同订立之后,不是由于任何一方当事人的故意、过失或疏忽,而是由于发生了当事人在订立合同时不能预见,对其发生和后果不能避免并不能克服的事件,以致不能履行合同或不能完全履行合同,遭受事故的一方即可根据合同或法律的规定获得免除其违约责任的权利。如因此不能按合同约定的期限履行合同,在事件的后果影响持续的期间内,免除其延迟履行的责任。因此,合同中的不可抗力条款又称免责条款。在国贸实务中,不可抗力条款的制定大多是针对卖方交货责任而言,因此不可抗力实际上免除的是卖方由于发生不可抗力而不能履行合同或延迟履行合同的责任,故最佳答案为 C。

7. After a dispute, in case that the parties concerned are unable to reach an agreement, they can ask a third party to help settle the dispute. But the result has no binding effect on either party. This action is called _____.

A. negotiation B. mediation C. arbitration D. litigation

解：这四个选择都是解决争议的方法，协商(negotiation)是买卖双方之间自行通过友好协商解决争议，如果双方不能就争议的解决达成一致的意见，可要求买卖双方都认可的第三方介入帮助解决争议，这就是调解(mediation)。仲裁(arbitration)虽也是双方自愿将纠纷提交给一个双方同意的第三方来进行裁判，但其与调停有区别，调停的结果不具约束力，而仲裁的裁决结果是终局的，具有约束力，不得上诉。选择 D 诉讼(litigation)是指将纠纷诉之于司法程序，提交法院裁决，可有当事人一方单方面向法院投诉，无须双方当事人的同意。因此根据题意，此题答案为 B。

8. Before going for arbitration, both parties involved in a dispute need to make an arbitration agreement in written form, in which they agree to refer the subject in dispute to a third party. This indicates the _____ nature of arbitration.

A. flexible B. simplified C. compulsory D. voluntary

解：相对于诉讼，仲裁的程序比较简单、处理问题时间较短，并具有较大的灵活性和较多的选择自由。但仲裁前，双方当事人要自愿将争议交付仲裁机构解决，并提交书面协议表达其自愿的原则，因此仲裁的书面协议(arbitration agreement)反映了仲裁的自愿性(voluntary nature)，答案为 D。

9. The award of arbitration is final and binding on both parties. This shows the _____ nature of arbitration.

A. flexible B. swift C. enforceable D. voluntary

解：我国的仲裁法规定仲裁的裁决(award)是终局性的，对双方当事人都有约束力，必须依照执行，任何一方都不许向法院提起起诉要求变更。其他国家一般也不允许当事人对仲裁裁决不服而上诉法院。即使向法院提起诉讼，法院一般也只是审查仲裁程序，不审查实裁决是否正确。若败诉方不执行裁决，胜诉方有权向有关法院起诉，要求法院强制执行，可见仲裁的裁决是终局性的、强制性的(enforceable)，故答案为 C。

10. The best way to stipulate the place and time of inspection is _____.

A. inspection at the factory

B. inspection at the port of shipment

C. inspection at the port of destination

D. inspection at the port of shipment and re-inspection at the port of destination

解：一般有三种关于检验时间和地点的制定方法：装运港检验，目的港检验和装运港检验、目的港复验三种。装运港检验是指货物在装运港转载前，由卖方委托出口地的商检机构对商品进行检验，出具检验证书，作为最后依据，买方无权提出异议。目的港检验是指货物在目的港卸货后由当地的商检机构进行检验，出具检验证书，作为商品品质和数量(重量)的最后依据，货物在运输中的损失由卖方负责。装运港检验、目的港复验是指卖方在装运港凭出口地商检机构出具的检验证书作为向银行议付货款的单据，但不作为货物品质和数量(重量)的最后依据；货到目的港后，由买方对货物进行复检，如发现货不对板，可向卖方提出异议并索赔。故答案为 D。

II. True or false statements.

1. __T__ Reasons for disputes in international trade can be classified into three categories: breach of contract by the seller, breach of contract by the buyer and breach of contract by both the seller and the buyer.

解: 此题正确。在国际贸易中产生争议的原因很多,大致可归纳为三类:1. 卖方违约,如不按合同规定交货,或所提供的货单种类不齐、份数不足等。2. 买方违约,如在信用证项下不按期开立信用证,不按合同付款,无理拒收等。3. 买卖双方均负违约责任,如合同条款不明确,致使双方理解或解释不统一而引起纠纷,或在履约中,双方均有违约行为等。

2. __F__ One of the ways to stipulate period for claim is: "Claim should be filed within 90 days after shipment".

解: 此题为错。合同中对索赔期限的规定一般以货物到达目的地而不是装运地开始起算,即在货物抵达目的港后一定时间内索赔人可以提出索赔,超过此期间索赔无效。通常有以下几种起算方法:(1) 货到目的港后××天起算;(2) 货到目的港卸离海轮后××天起算;(3)货到买方营业处所或用户所在地后××天后起算;(4)货物检验后××天起算。

3. __T__ The best way to stipulate force majeure events in the Force Majeure Clause of a contract is to stipulate them in a synthesized way.

解: 此题正确。在我国进出口合同中的不可抗力条款,基本上有三种规定的方法:(1) 概括式,即在合同中不具体订明哪些事故是不可抗力事故,只做概括的规定。(2) 列举式,即在合同条款中明确规定哪些意外事故是不可抗力事故,凡合同中没有列到的,均不能作为不可抗力事故处理。(3) 综合式,即将概括和列举两种方式结合使用,这种方法既明确,又有一定的灵活性,比较科学实用,故多采用此种规定的方法。

4. __F__ The arbitration award is final and binding on both parties, therefore should be enforced without any doubt.

解: 此题为错。虽然仲裁法规定仲裁的裁决(award)是终局性的,对双方当事人都有约束力,必须依照执行,任何一方都不许向法院提起起诉要求变更。但是如果当事人对仲裁的程序有异议时,可以向法院提起诉讼。如果法院查处裁决在程序上有问题,有权宣布裁决无效。

5. __F__ There are two main types of arbitration body: governmental body and non-governmental body.

解: 此题为错。国际贸易中的仲裁,可由双方当事人约定在常设的仲裁机构进行,也可以由双方当事人共同指定仲裁员组成临时仲裁庭进行仲裁。仲裁庭通常是由国家或国际组织所设,没有非官方机构之说。我国常设的仲裁机构主要是中国国际经济贸易仲裁委员会和海事仲裁委员会。官方和非官方两种机构之说应该是指商品检验机构而言。

6. __T__ Inspection on import and export commodities in China falls into two categories: statutory inspection and non-statutory inspection.

解: 此题正确。我国进出口商品检验分法定检验和非法定检验两种,前者是对列入

《种类表》的商品及其他法律、法规规定必须经过商检机构或者国家商检局、商检机构检验的商品进行的检验。后者是对除此以外的其他商品的检验。

7. __F__ If a claim is well supported, the claimant shall pay a fine, a certain percentage of total contract value.

解：此题为错。题中指出索赔人(claimant)会支付罚金是错误的,正确的应该是被索赔人(claimee)。在买卖合同中,索赔人通常是买方,而被索赔人通常是卖方。在国际贸易中,如果买方索赔正当、及时而且佐证材料充足、合理,他能及时得到赔偿。卖方赔偿的方式不只局限于支付合同货款一定比例的罚金,一般可以按照下列方法解决索赔问题:(1) 同意买方拒收货物,并按合同规定退还货款;(2) 根据货物的质量、损坏程度等降价处理货物;(3) 按照合同中货物的规格、品质重新更换货物,等等。

8. __T__ The main ways to settle disputes in international trade are negotiation, mediation, arbitration and litigation.

解：此题正确。在国际贸易中,买卖双方发生了贸易纠纷,应当采用友好协商(negotiation)的办法来解决,当协商不能解决时,在争议双方自愿的基础上,由第三者出面从中调解(mediation),如调解失败,可采用仲裁(arbitration)的办法,由仲裁庭按照仲裁规定和程序进行仲裁,直到做出终局裁决。如果双方当事人的任何一方不愿用上述方法,或协商调解失败而又不愿诉诸仲裁庭,则可单方出面向法院提起诉讼。

9. __F__ When a force majeure event takes place, the party concerned has no choice but to terminate the contract.

解：此题为错。发生不可抗力事件后,双方应按约定的处理原则和办法及时进行处理。不可抗力的后果一般有两种:一种是解除合同;另一种是延期履行合同。究竟如何处理,应视事故的原因、性质、规模及其对履行合同所产生的实际影响程度而定。

10. __F__ The arbitration tribunal has the power to decide that the losing party shall pay the winning party the arbitration fee incurred in dealing with the case.

解：此题为错。有关仲裁费由谁来负担的问题,通常在合同的仲裁条款或仲裁协议中有明确的规定。费用一般先由申请人在提出仲裁申请时预交,然后,在仲裁终结时,根据仲裁结果确定费用的最终承担者。根据我国《仲裁法》和《仲裁委员会收费办法》的规定,当事人仲裁费用的承担一般有以下两种情况:(1) 一方当事人完全败诉,败诉的当事人承担全部仲裁费用。(2) 当事人部分败诉、部分胜诉的情况下,当事人按比例分摊。这一比例根据双方当事人责任的大小来确定。

III. Explain the following terms.

1. commodity inspection

答：Commodity inspection is the inspection conducted by an authorized third party to testify whether the quality, quantity, weight, package, etc. are the same as those specified in the contract.

2. inspection certificate

答：The inspection statement issued by the commodity inspection authorities after the

commodities have undergone inspection is called the inspection certificate.

3. breach of contract

答: Breach of contract means the refusal or failure by one party of a contract to fulfill an obligation imposed on him under that contract. It can be made by the seller, by the buyer or by both the seller and the buyer.

4. claim

答: Claim refers to a demand made by one party upon another for a certain amount of payment on account of a loss sustained through its negligence. There are generally three types of claim related to international trade practice: claim regarding selling and buying, claim regarding transportation and claim concerning insurance.

5. penalty clause

答: Under penalty clause the party who has failed to carry out the contract such as non-delivery, delayed delivery, delayed opening of L/C, etc. must pay another party a fine, a certain percentage of total contract value.

6. force majeure

答: Force majeure, also named Act of God, refers to an event that can neither be anticipated nor be reduced to control. Force majeure events enable a seller to avoid his contractual obligations without paying a compensation or penalty.

7. arbitration

答: Arbitration is the resolution of a dispute between two parties through a voluntary or contractually required hearing and determination by an impartial third party.

8. arbitration award

答: An arbitration award (or arbitral award) is a determination on the merits by an arbitration tribunal in an arbitration, and is analogous to a judgment in a court of law.

IV. Short questions.

1. What are the ways to stipulate inspection time and place according to CISG 1980?

答: The inspection of the goods can be conducted at various stages of the trade process. There are generally three ways to stipulate the place and time of inspection in the sales contract: inspection at the factory or at the port of shipment, inspection at the port of destination and inspection at the port of shipment and re-inspection at the port of destination.

2. What are the reasons that result in disputes in international trade?

答: In international trade practice, the main reasons for disputes can be concluded into three categories: breach of contract by the seller, breach of contract by the buyer and breach of contract by both the seller and the buyer.

A seller may be considered to have breached a contract if he fails to make delivery of the goods that are in strict conformity with the contract or the L/C within the contracted shipment time or fails to present the complete and adequate shipping documents within the stipulated

time period.

A buyer may breach a contract if he fails to open the relevant L/C in time under an L/C payment or fails to accept the goods without sufficient reasons; or fails to dispatch the vessel or notify the seller under FOB terms.

Breach of contract by both parties may arise due to the misunderstanding or miscomprehension of a contract that is not clearly stipulated.

3. What are the ways to stipulate a Claim Clause?

答: Normally, there are two ways to stipulate a claim clause in the contract: discrepancy and claim clause and penalty clause. For most transactions, only discrepancy and claim clause is stipulated, while for transactions where goods in substantial quantity or large mechanical equipment are concerned, a penalty clause will be necessary in case one party fails to implement the contract such as non-delivery, delayed delivery, delayed opening of L/C, etc.

4. What are the consequences resulted from force majeure events?

答: There are usually two consequences resulted from force majeure events: postponement of the contract and/or termination of the contract. Whether terminating the contract or postponing the performance of the contract depends on the detailed stipulations in the contract or on the degree to which the force majeure event has affected the performance of the contract.

5. What are the differences between arbitration and litigation?

答: 1) Arbitration is applied on the will of both parties concerned. In case no agreement can be reached, neither party can force the other to submit to arbitration. However while resorting to litigation, the plaintiff may take a unilateral action against the defendant without agreement between the two parties in advance.

a) The arbitration organization is not an official one. The parties in question can appoint their own arbitrator respectively, however the third one will be appointed by the arbitration institution. By contrast, judges in litigation should be appointed by the government.

b) The award made by arbitrators is final and binding on both parties, that is, neither party of the dispute shall bring an appeal for revision before a law court or any other organizations. An arbitral award once made has the force of law, but there is no need to register and keep it in a law court. While in the case of litigation, if the parties concerned refuse to obey the verdict, they can retain the right to appeal to a higher court.

6. What are the contents of an arbitration clause?

答: An eligible, effective, complete and accurate arbitration agreement or arbitration clause should have the following elements: place of arbitration, the name of the arbitration body, the applicable arbitration rules, the arbitration award, etc.

V. Case studies.

1. A Chinese company exported food products to Rotterdam under L/C. The L/C issued

by the importer stated that the exporter should provide Sanitary Inspection Certificate in which the wording "The food products are free from illness and are up to standards for eating" was required. After shipment, when the exporter negotiated for payment, the negotiating bank found that the certificate presented by the exporter didn't show the wording "The food products are free from illness" required in the L/C. The negotiating bank deemed it a discrepancy and asked the issuing bank for opinions. However, the issuing bank didn't answer. In order to avoid dishonor by the issuing bank, the exporter had to ask the inspection body to issue another certificate that was in line with the requirement of the L/C. As a result, the exporter suffered losses resulted from the 20 days' delay in the settlement for payment. What lesson can the exporter learn from this case?

析:本题解题的关键在于了解信用证支付的性质。信用证支付是银行信用,即银行是第一付款人,支付的条件就是卖方所提供的信用证规定的单据必须在表面上与信用证的内容完全一致。开证行核对单证无误之后,可以付款。在此案例中,卖方所提交的卫生证书内容与信用证规定不符,议付行为了能确保得到开证行的偿付,要求卖方重新开具与信用证相符的卫生证,由此而导致卖方受损。卖方应该重视信用证项下单证一致的性质,否则不仅可能不能顺利收到款项,而且货物抵达目的港时会由于卫生证的问题而被拒绝入港。

答题切入点:信用证支付的性质,即单证相符。

2. In October, export company A of China signed a contract with a foreign client for the export of agricultural products with the time of delivery in December. However, in July and August of the same year, the producing area suffered great draught and the exporter was unable to make delivery within the time stipulated in the contract. As a result, the exporter asked for the termination of the contract on the basis of force majeure event. Is the exporter appropriate in asking for the termination? Why or why not?

析:答案是 No。本题关键是如何确定发生的意外是否是不可抗力的问题。根据不可抗力的性质,不可抗力是指买卖双方在订立合同时没有预测到的、不能控制的事故,发生在合同订立之前的事故不算是不可抗力。此案例中合同订立实在十月,旱灾发生在七、八月,因此不能算作不可抗力事件。

本题答题切入点:不可抗力事件发生的时间。

3. Our company signed a CIF contract with an American company, importing a piece of equipment. The total amount of the contract was USD8 million. It was stipulated in the contract that "if one party of the contract breaches the contract, the other party will have the right to lodge a claim for compensation", and that "the party breaching the contract shall pay USD12 million as penalty for compensating the other party for the damages." After the signing of the contract, our company didn't receive the equipment from the American seller, which in turn influenced the production and sale of our own products. As a result, our company lodged a claim against the American seller within the period for claim stipulated in the contract. However, the American seller filed litigation unilaterally to the local court.

Comment on the case.

析：美国把违约金严格分为“罚金”(penalty for breach of contract)和“预约赔偿金”(pecuniary penalty) 两种,前者是无效的,不可强制执行,而后者是有效的,可以强制执行。至于两者之间怎样区分,要以当事人订立合同时的真实意图而定。如果意图是惩戒或预防违约发生而规定的,是“罚金”;如果是为了减少将来计算违约损害的麻烦而规定的,则属于“预约赔偿金”。

本题中的“if one of the party of the contract breach the contract, the other party had the right to lodge a claim for compensation”, and that “the party breaching the contract shall pay USD12 million as penalty for compensating the other party for the damages.” 的条款,应该判断是为了预防违约发生而规定的,此外,违约金金额较高,超过合同价款的一半,也可理解为有惩戒的性质,属于“罚金”,法院可以不予承认。因此,在外贸中我们应熟悉各国的相关法律和规则,在合同中明确是哪一种条款,以避免履约过程中产生的歧义和争论。

答题切入点:违约金在英美法系国家的规定。

4. Company A signed a contract with a foreign importer, exporting agricultural products. The date for signature was September 1 and the time for shipment stipulated in the contract was October, November and December. However, after the mid-September, the domestic price of the contracted product rose to a significant extent. Company A found it would suffer great loss if it exported the goods according to the contract. Upon investigation, the reason for the rising of the price was the serious flood taking place in the producing area in mid-July. Can Company A resort to Force Majeure Clause for the avoidance of its contractual obligations? What lessons can Company A learn from this case?

析：答案是 No。解此题,要看 A 公司不能完成出口的真正原因是什么。本案例中 A 公司签订合同的日期早于严重水灾发生的日期,不属于不可抗力事件的范畴。因此 A 公司不能出口的原因不是不可抗力事故导致的,而是由于自己没有做深入的市场调查,没有正确报价造成的。

本题的切入点:1) 不可抗力事故的理解;2) 贸易前做好市场调查的重要性。

5. On February 2nd, a seller signed a CFR contract with a Chinese buyer which stipulated that L/C was the term for payment. The Chinese buyer issued L/C and the seller fulfilled shipment and presented a full set of documents required. Later on, the seller issued a Letter of Indemnity, asking the shipping company to release the goods to a company in Shantou of China. On 24th of March, the Chinese buyer obtained the full set of documents and went to the shipping company to take delivery of the contracted goods. However, he was told the goods had been taken by the company in Shantou on 18th of the same month. On 9th of June of the same year, the seller settled payment under the contract with the bank. Despite the efforts, the buyer was still unable to get the contracted goods. As a result, on 14th of March of next year, the Chinese buyer asked for arbitration in China. What award could the arbitrators possibly issue for this case?

析：本题是在 CFR 条件和信用证的付款方式下成交的，卖方的基本义务是在合同规定的时间内完成交货，并提交包括提单在内的单据，并转移货权，以使买方能凭提单提取货物。此案例中买方提不到货，是由于卖方向承运人出具保函，向第三方放货造成的，卖方行为已构成违约。仲裁可能的判决就是卖方应赔偿因其违约而给买方造成的损失。

本题的答题切入点：1）CFR 和 L/C 条件下卖方的基本义务；2）出具保函放货的责任。

Model Test 1

I. Translate the following terms into Chinese or English.（**20%**）

1）penalty clause
2）weather workings days of 24 consecutive hours
3）revolving credit
4）symbolic delivery
5）title document
6）quality latitude
7）with particular average
8）advanced bill of lading
9）voyage charter
10）insurable interest
11）仲裁裁决
12）理赔
13）习惯皮重
14）绝对免赔率
15）公量
16）指示性标志
17）拒付
18）不可抗力
19）拼装箱
20）本票

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）**.**

1）Transit trade refers to the transaction involving importing goods from overseas for further processing and then re-exporting the goods abroad.

2）If a transaction is concluded under trade terms starting with letter C, the seller shall pay the freight to ship the goods to the destination, but shall not be responsible for the risk of the goods in transit.

3）A trade contract becomes effective at the moment when the offeree makes a statement or conducts an act that indicates an acceptance.

4）According to UCP 600, in absence of any More or Less Clause specifying the quantity, a tolerance not exceeding 10% more or less is allowed.

5）The four basic elements in a shipping mark are the name of the consignee, the port of destination, the contract number and the number of packages.

6）A transferor should endorse a straight B/L at the back if he wants to transfer the title to the goods to other parties.

7）Lay time, demurrage and dispatch are all terms concerning loading and unloading related to voyage charter.

8）W/W clause is a clause stipulating the duration of insurance suitable only for marine cargo insurance with War Risks as an exception.

9）In B/E practice, 'dishonor' means the refusal to the acceptance or payment of a duly presented draft by the drawer.

10）In case of disputes, if litigation is not adequate to work out the settlement, arbitration is the next best alternative.

III. Choose the best（only one）answer for each question.（15%）

1）In trade negotiation, a conditional acceptance is _____.

A. a form of counter-offer　　B. an unconditional refusal

C. an acceptance with reservation　　D. a conclusion of contract

2）A Japanese trader concluded a transaction under CIF Tianjing, exporting fiber products to China. The contract included the term of force majeure. Soon the price of oil rose sharply due to the Gulf War, as a result of which, the cost of the Japanese exporter increased by 20%. The Japanese exporter then asked for raising export price based on force majeure events.

A. As Gulf War is a force majeure event, the Japanese exporter can terminate the contract.

B. As this is a commercial risk not a force majeure event, the Japanese exporter shall perform the contract as usual.

C. As the rise in cost is caused by external accidents, the Japanese export shall raise the price for export.

D. There are unfair terms in the contract.

3）Which one of the following prices is correctly expressed?

A. USD3. 50 CIF Beijing　　B. USD3. 50 per piece CIF

C. USD3. 50 per piece CIFC London　　D. USD3. 50 per piece CIFC2 London

4）In international trade practice, the price that doesn't include commission and/or discount is known as _____.

A. actual price　　B. general price　　C. normal price　　D. net price

5）Under L/C payment term, the obligation of the advising bank is _____.

A. to notify the seller of the arrival of the L/C

B. to issue the L/C upon the application of the importer

C. to buy a documentary draft

D. to make actual payment

6）A Chinese company concluded an export transaction with a foreign company under CIF term. If there are no specific stipulations concerning the insurance, the Chinese exporter shall effect _____.

A. WPA　　B. FPA

C. AR　　D. AR and WR

7）Under a negotiation credit, the payer of a draft is _____.

A. the applicant　　B. the negotiating bank

C. the issuing bank　　D. the advising bank

8）The duration for Air Transportation Insurance shall be limited to _____ days after completion of discharge of the insured goods from the aircraft at the final airport of discharge.

A. 60 days　　B. 45 days

C. 30 days D. 15 days

9) The loss of the particular average shall be borne by _____.

A. the carrier B. the party who suffers the loss

C. all parties proportionally D. all parties equally

10) In the case of a late acceptance, _____ will decide whether the acceptance is effective or not.

A. the party who invites the offer B. the party to whom the offer is made

C. the party who makes the enquiry D. the party who makes the offer

11) _____ serves as the basis for the calculation of export revenue.

A. FOB price B. CFR price

C. CIF price D. CPT price

12) Under CFR term, the transfer of risk from seller to buyer happens when the goods are delivered _____.

A. to the first carrier

B. at the port of destination

C. to the buyer at the port of destination

D. on board the vessel at the port of shipment

13) The most commonly adopted way of stipulating weight in international trade contract is _____.

A. gross weight B. net weight

C. theoretical weight D. tare weight

14) In the case of neutral packing with designated brand, _____.

A. neither brand or trade mark nor the country of origin is indicated

B. both brand or trade mark and the country of origin are indicated

C. only brand or trade mark is indicated

D. only the country of origin is indicated

15) A letter of credit is issued on the basis of the _____.

A. sales contract B. packing list

C. commercial invoice D. draft

IV. Short answer question (15%)

1) What are the features of a bill of lading?

2) What are the conditions for general average?

3) What are the main documents required for the negotiation of payment under L/C term?

V. Calculation（20%）

1）We offered at GBP1, 150 per M/T CFR Rotterdam. Our counterpart replied asking us to offer on FOB Shanghai term with a 2% commission. The freight from the port of shipment to the port of destination was GBP170 per M/T. What would be the FOBC2 offer?

2）ABX Company concluded a transaction at USD50 per case FOB Kobe. The British counterpart asked for CIF London price. Suppose the measurement of each case is 45 cm× 40 cm×25 cm and gross weight for each case is 35kg. Freight basis is W/M and the carriage is USD120 per case, plus 20% Additional on Direct and 10% Port Surcharge. Insurance rate is 0.5% and markup is 10%. What would be the CIF price?

VI. Case study（20%）

1）Our company imported steel plate from abroad. The contract stipulated that goods were shipped in two lots and payment was by irrevocable sight L/C. Bank of China was designated to issue two credits for each lot. After the delivery of the first lot, the foreign exporter presented the documents required within validity time and Bank of China reimbursed the negotiating bank accordingly. However, after receiving the first lot of the goods, we found the quality of the goods was not up to the standard stipulated in the contract. As a result, upon our request, Bank of China dishonored the second lot of the goods. Analyze:

① Is it appropriate for Bank of China to dishonor? Why or why not?

② How can we do to make the quality of the imported goods in line with the contract?

2）Orange Company singed a contract with Big Company exporting peanuts, with the price term as CIF Pittsburgh. It received a clean on board B/L from the carrier. However, when the goods arrived at the destination, the consignee found part of the goods were damped and went moldy. Big Company immediately lodged a claim against the insurance company for compensation. Upon investigation, it was found that the damage to the goods was caused by the fact that the goods were loaded on the deck instead of in the ship's hold. The insurance company refused to make compensation because the seller didn't insure on-deck risk. The insurer then asked the buyer to lodge a claim against the seller. However, the seller said that he had no idea about the fact and the B/L issued by the carrier was clean on board. Comment on the case.

Model Test 2

I. Translate the following terms into Chinese or English.（**20%**）

1）discrepancy
2）demurrage
3）irrevocable credit
4）more or less clause
5）statutory inspection
6）quality tolerance
7）free from particular average
8）stale bill of lading
9）time charter
10）the indemnity principle
11）仲裁条款
12）索赔方
13）以毛作净
14）不计免赔
15）平均皮重
16）中性包装
17）议付行
18）象征性交货
19）整箱装
20）跟单汇票

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）

1）As most of the trade in the world today refers to the exchange of visible goods rather than invisible goods, many rules, regulation and conventions concerning trade in the world such as Incoterms, United Nations Convention on Contracts for International Sale of Goods（CISG）, Uniform Customs and Practice for Documentary Credits（UCP）etc. are all made to deal with visible goods trade.

2）Under the term CIF, the seller has to contract for carriage and insurance, bearing the risk of loss or damage to the goods or additional costs due to events occurring after shipment or dispatch.

3）An irrevocable offer means that the offeror has no right to withdraw the offer.

4）In accordance with the international practice, unless the contract stipulates otherwise, the more or less part will be counted at the contract rate.

5）All marks on the shipping packages are officially termed as "shipping marks".

6）Under CIP term the seller is obliged to obtain cargo insurance but at a minimum level.

7）Demurrage is usually half of dispatch.

8）When an importer insures the goods under a CFR contract against All Risks, the insurance company undertakes an insurance liability over the insured cargo from the warehouse of the shipper named in the policy until the cargo has arrived at the warehouse of the receiver named in the policy.

9）The payer of a bank bill is a bank while the payer of a commercial bill is a company.

10）In international trade, the best way to solve disputes is through arbitration.

III. Choose the best (only one) answer for each question. (15%)

1) If the seller and the buyer intend to make delivery when goods are handed over to the shipping company in its warehouse right next to the port, _____ is the right term to use.

A. FAS B. FOB

C. FCA D. CFR

2) According to CISG 1980, a contract is formed the moment when _____.

A. the acceptance becomes effective

B. the written contract is being signed

C. it has been approved by the authority

D. the offer has reached the offeree

3) If a contract is concluded on FOB basis, the contract price indicates the _____.

A. total export cost

B. export cost price

C. export revenue in foreign exchange

D. export cost for foreign exchange

4) The total cost in exporting one product is CNY14,000, and the net income from export is USD2,500. If the foreign exchange rate quoted by Bank of China is CNY680 against USD100, then the Export Profit Margin should be:

A. 18.5% B. 21.43% C. 16.60% D. 23.65%

5) _____ refers to the holder of the B/E presenting the bill to the drawee, asking the latter either to pay or to accept it.

A. Drawing B. Acceptance C. Endorsement D. Presentation

6) To insure against the cargoes from being stolen, we should cover _____.

A. FPA B. All Risk C. TPND D. All Risk+TPND

7) Under a negotiation credit, the drawee of a draft is usually _____.

A. the applicant B. the negotiating bank

C. the issuing bank D. the advising bank

8) The duration of Ocean Transportation Insurance shall be limited to _____ days after completion of discharge of the insured goods from the seagoing vessel at the final port of discharge before they reach the above mentioned warehouse or place of storage.

A. 60 days B. 45 days C. 30 days D. 15 days

9) The loss of the general average shall be borne by _____.

A. the carrier B. the party who suffers the loss

C. all parties benefited proportionally D. all parties benefited equally

10) According to CISG 1980, a late acceptance is _____.

A. definitely not effective as an acceptance

B. effective as an acceptance if the offeree so insists

C. effective as an acceptance if the offeror keeps silent

D. effective as an acceptance if without delay the offeror orally informs the offeree or dispatches a notice to that effect.

11) When C terms are adopted, risks after shipment are to be taken by _____.

A. the insurance company B. the buyers

C. the sellers D. the shipper

12) If the seller delivers a quantity of goods greater than that provided for in the contract, according to CISG 1980, the buyer cannot _____.

A. take delivery of all the goods

B. refuse to take delivery of all the goods

C. take delivery of the goods in quantity as specified in the contract

D. refuse to take delivery of the excessive quantity

13) The ratio between the total cost of export in local currency and export revenue in foreign currency reflects the _____.

A. export profit B. export profit margin

C. export cost for foreign exchange D. rate of foreign exchange-earning

14) The common ways to measure tare when net weight is adopted in a sales contract include the following EXCEPT _____.

A. computed tare B. average tare C. customary tare D. legal tare

15) In practice, the draft drawn under L/C payment is usually to indicate _____.

A. the contract number and the date of its signing

B. the invoice number and the date of its issuance

C. the B/L number and the date of its issuance

D. the L/C number and the date of its issuance

IV. Short answer question (15%)

1) What are the three main categories of bill of lading?

2) What are the difference between particular average and general average?

3) What are the main characteristics of L/C payment?

V. Calculation (20%)

1) The price quoted by an exporter was "USD100 per case FOBC5% Shanghai", for 100 cases of Commodity A. The importer requested a revised price CIFC5%. If the size of each case was 25cm×20cm×20cm, gross weigh was 15 kg per case, freight basis was W/M, USD200 per ton, plus USD10 per ton bunker adjustment factor and 10% port surcharge. The importer also requested for 10% above CIF price for WPA (with particular average) and War risk, the rate of premium was 1.2%.

a. How much is the freight?

b. How much is CIFC5%?

c. How much is the insurance amount?

d. How much is the insurance premium?

2) A company export some goods to Canada, the export sales price is USD500 per metric ton, CIF Vancouver, the transportation expense is USD70 and insurance expense is USD6.5. If the purchase price of this item is CNY1,800 per metric ton, and domestic direct and indirect fees should add 17%, please calculate the cost of foreign exchange of the deal and its profit margin. (Supposed: USD1=CNY6.5)

VI. Case study (20%)

1) An exporter signed a contract with a foreign company to sell 10 M/T of commodity B. The L/C amount was USD30,000. According to the contract, the seller has the option to ship in a quantity of 3% more or less. The seller loaded 10.2 M/T and draw a draft for USD30,600. When the seller went to the bank for negotiation, can the bank refuse? Why or why not?

2) In response to our enquiry, Company B sent us a buying offer, subject to our reply before July 22nd. On July 24th, we telexed our acceptance to the offer but received no reply. As the market kept going up, we unexpectedly received a telex on August 24th from Company B requesting us to make shipment before the end of August as specified in the offer, or they would reserve the right to claim against us for compensation. Comment on the case.

Model Test 3

I. Translate the following terms into Chinese or English.（**20%**）

1）anticipatory credit　　2）banker's draft

3）documents against payment　　4）Incoterms 2020

5）extraneous risks　　6）conference liner

7）Charter Party　　8）measurement ton

9）gross weight　　10）clean bill of lading

11）虚盘　　12）自由议付信用证

13）凭实际品质买卖　　14）电汇

15）仓至仓条款　　16）撤销报盘

17）对开信用证　　18）品质公差

19）打包贷款　　20）海上风险

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）

1）According to UCP 600, a letter of credit which does not indicate whether it is transferable or not would be considered transferable.

2）Under D/A payment the collecting bank will first accept the draft and then present the documents to the importer.

3）Different from L/C payments, the beneficiary of an L/G can be the importer.

4）In international trade, sellers always decide the packing of goods, buyers cannot have special requirements.

5）Factoring is normally arranged between the factor and the buyer.

6）Inspection of goods can be conducted at different stages of the trade process and by different parties.

7）Time of shipment and time of delivery can always be used interchangeably.

8）A proforma invoice is used when the seller is billing the buyer.

9）The purpose to include the force majeure clause in the contract is to safeguard the interests of the parties when some events beyond the parties' control happen.

10）The export cost for foreign exchange ratio tells the relationship between the net profit and the sales volume.

III. Choose the best（**only one**）**answer for each question.**（**15%**）

1）Which of the following is NOT a mode of collection?

A. D/A　　B. D/P　　C. D/P-T/R　　D. D/D

2）Which of the following documents represents the title to the cargo?

A. CTD B. air waybill C. road waybill D. bill of lading

3) Which of the following is NOT covered by All Risks?

A. Sacrifice in and contribution to general average and salvage charges

B. Partial loss consequent on falling of entire package or packages into sea during loading

C. Total loss caused by accidents

D. Loss or damage falling under the liability of the consignor

4) The Institute Cargo Clauses (C) is similar to _____ of CIC.

A. AR B. FPA C. WA D. SRCC

5) The bank on the buyer's side under a collection arrangement is the _____.

A. remitting bank B. collecting bank

C. opening bank D. notifying bank

6) Which of the following is NOT a feature of liner?

A. Having regular schedule

B. Using fixed routes

C. Freight rate comparatively more changeable

D. Providing good service

7) According to Incoterms 2020, FOB term shares one thing with CIF term in that _____.

A. both terms can be used for any mode of transportation

B. both terms have risks transferred when goods are placed on board vessel

C. both terms require the seller to arrange the contract of carriage

D. both terms require the buyer to arrange the contract of carriage

8) According to Incoterms 2020, the following terms are applicable to any mode of transportation EXCEPT _____.

A. DDP B. EXW C. FCA D. FAS

9) "200m^2 glass sheet" is an example of using _____ to specify quantity.

A. area B. length C. volume D. number

10) Normally when traders are designing shipping package, they may need to consider these marks EXCEPT _____.

A. warning mark B. shipping mark

C. indicative mark D. trading mark

11) Counter sample can also be called _____.

A. duplicate sample B. file sample

C. confirmed sample D. contracted sample

12) Under a _____, the amount of credit can be automatically re-available after it is used.

A. standby credit B. revolving credit

C. reciprocal credit D. back to back credit

13) "FOB Vessel New York" is a trade term in _____.

A. Incoterms 2020

B. Revised American Foreign Trade Definitions 1990

C. Warsaw-Oxford Rules 1932

D. Incoterms 2010

14) If a bank rather than the issuing bank provides guarantee for the payment of an L/C against documents which are in conformity with the condition of the L/C, this credit is _____.

A. an irrevocable letter of credit B. a transferable letter of credit

C. a confirmed letter of credit D. a letter of credit by negotiation

15) "ABT" used in a documentary credit refers to a _____ more or less of the stipulated amount or quantity.

A. 3% B. 5% C. 10% D. 15%

IV. Short answer question (15%)

1) What are the similarities and differences between a transferable L/C and a back-to-back L/C?

2) What are the two types of trade terms concerning the transfer of risks? What is the main difference between them?

3) What are the main steps in the arbitration procedure?

V. Calculation (20%)

1) X Company signed a CIF contract to import a shipment of vehicle. The total value of the contract is USD1, 250, 000. X Company obtained insurance to cover All Risks and War Risk for 110% of the value of the goods. If the average premium rate is 0. 25%, please calculate the insurance amount and the premium.

2) A Chinese company was making an offer to its customer. The original offer was CIF Dubai USD2, 000M/T, covering All Risks and War Risk for 110% of the value of goods. The customer was asking for a CFR price. If the insurance premium rate is 0. 7%, to keep a constant profit margin, what would be the new offer?

VI. Case study (20%)

1) A Chinese exporter intended to sell goods to a Japanese buyer by D/P at sight. Instead the Japanese buyer requested payment by D/P 90 days after sight. Furthermore, the Japanese buyer would nominate the collecting bank. Why did the Japanese make this proposal?

2) A Chinese company was selling 100 cartons of lipstick to a French Co. in August and

another 100 cartons to a Saudi Arabian Co. in October, both with CIF contracts. Both shipments were insured for All Risks. In the transit from the Chinese company's warehouse to the port of shipment, due to the hot weather in summer, most of the lipsticks for the French buyer melt (the melting point of these lipsticks was 35℃). When the Saudi Arabian buyer was taking the goods from the destination port to his warehouse, the same problem happened. Analyze and explain under each deal, who should take the loss?

Key to Model Test 1

I. Translate the following terms into Chinese or English.（**20%**）

1）罚金条款
2）连续 24 小时好天气工作日
3）循环信用证
4）象征性交货
5）物权凭证
6）品质机动幅度
7）水渍险
8）预签提单
9）承租船
10）可保利益
11）arbitration award
12）claim settlement
13）customary tare
14）deductible franchise
15）conditioned weight
16）indicative mark
17）dishonor
18）force majeure
19）less than container load（LCL）
20）promissory note

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）

1）~ 5）F T F F T　　6）~10）F T F F F

III. Choose the best（**only one**）**answer for each question.**（**15%**）

1）~5）A B D D A　　6）~10）B C C B D　　11）~15）A D B C A

IV. Short answer question：（**15%**）

1）A bill of lading has three major features：

a. It is a cargo receipt.

b. It is an evidence of a contract of carriage.

c. It is a document of title to the goods.

2）A partial loss is a general average if it satisfies the following conditions：

a. The danger that threats the common safety of cargo and/or vessel shall be materially existent and not foreseen.

b. The measures taken by the master shall be aimed to remove the common danger of both vessel and cargo and shall be undertaken deliberately and reasonably for common safety.

c. The sacrifice shall be specialized and not caused by perils directly.

d. The expense incurred shall be additional not within the operational budget.

e. The actions of the ship's master shall be successful in saving the voyage.

3）The main documents needed for negotiation of payment under L/C term include：

a. the commercial invoice

b. the packing list

c. the bill of lading

d. the insurance policy, etc.

V. Calculation:(20%)

1) Solution:

FOB = CFR − F = 1 150 − 170 = GBP980

FOBC2 = FOB/(1 − C) = 980/(1 − 2%) = GBP1, 000

The FOB price with 2% commission is GBP1, 000 per M/T FOB Shanghai.

2) Solution:

W = 35kg = 0. 035m/t

M = 45cm×40cm×25cm = 0. 45 m×0. 4 m×0. 25 m = 0. 045 m^3

M > W, so M will be used as the freight basis for the calculation of freight.

Freight per case = M×basic freight rate × (1+additionals and surcharge)

= 0. 045×120×(1+20%+10%) = USD7. 02

$$\text{CIF} = \frac{\text{FOB}+\text{F}}{1-110\%\times\text{R}} = \frac{50+7.02}{1-110\%\times0.5\%} \approx \text{USD57.34}$$

The CIF price would be USD57. 34 per case CIF London.

VI. Case study (20%)

1) ① It is inappropriate for Bank of China to dishonor. Letter of credit is a document independent of sales contract. As long as the documents required are "on their face" in line with the letter of credit, the issuing bank has to make payment. In this case, there is no problem with the documents presented by the exporter. Therefore, even if the quality of the actual goods delivery was not up to the standard, Bank of China had no reason to dishonor.

② There are several ways to make the quality of the imported goods in line with the contract:

a. We should make thorough investigation into the customer's credibility before transaction.

b. We should stipulate in the sales contract that payment will not be made without the quality certificate issued by qualified inspection bodies.

c. We should stipulate in the contract a claim clause with penalty to prevent the customer's breach of contract.

2) The crux of this case is that the cargo was loaded on deck but the shipper did not insure the goods against "on-deck risk". It is customary practice in sea transportation to load the goods in the ship's hold. According to Hamburg Rules, if the carrier has enough reasons to believe that the goods have to be loaded on deck, he must notify the shipper in order to get the permission in written form and to enable the shipper to insure the goods against "on-deck risk". In this case, the seller was kept unknown about the fact that his goods had been loaded on deck, thus unable to insure his goods against "on-deck risk". The insurance company's

refusal of compensation is made on solid ground. Obviously, in this case, the carrier cheated Orange Company with the issuance of a clean on board B/L. As a result, the carrier is liable for loss of or damage to the goods. The seller can file a claim against the carrier for compensation.

Key to Model Test 2

I. Translate the following terms into Chinese or English.（**20%**）

1）不符点　　2）滞期费

3）不可撤销用证　　4）数量溢短装条款

5）法定商检　　6）品质公差

7）平安险　　8）过期提单

9）期租船　　10）补偿原则

11）arbitration clause　　12）claimant

13）gross for net　　14）I. O. P.

15）average tare　　16）neutral packing

17）negotiating bank　　18）symbolic delivery

19）full container load（FCL）　　20）documentary draft

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）

1）~ 5）T F F T F　　6）~10）F F T F F

III. Choose the best（**only one**）**answer for each question.**（**15%**）

1）~5）C A C B D　　6）~10）B C A C D　　11）~15）B B C D D

IV. Short answer question：（**15%**）

1）A bill of lading may fall into the following categories：

a. According to the apparent condition of the received cargo, bills of lading can be classified into clean B/L and unclean B/L.

b. According to whether the goods have been loaded on board the carrying vessel, bills of lading can be classified into shipped（or on board）B/L and received for shipment（or received）B/L.

c. According to the address of the consignee, bills of lading can be divided into straight B/L, order B/L and open B/L.

2）There are mainly two differences between particular average and general average：

a. Causes：particular average is a kind of cargo loss usually caused directly by sea perils, while general average is caused by intentional measures taken to save the common interest.

b. Indemnification：Particular average is often borne by the party whose cargo is damaged, while general average should be proportionally contributed among all parties benefited from the intentional measures.

3) The main characteristics of L/C payment are:

a. It is based on the bank's credit.

b. It is a self-sufficient document independent on the sales contract.

c. It is a documentary transaction in which the banks deal with the documents only.

V. Calculation: (20%)

1) Solution:

a. Freight:

W = 15kg = 0.015 m/t

M = 0.25 m×0.2 m×0.2 m = 0.01 m^3

W > M, so W will be used for the calculation of freight.

Total freight = 100×200×0.015×(1+10%)+10×0.015×100 = USD345

Freight per case = USD345÷100 cases = USD3.45

Answer: The freight is USD3.45 per case and the total freight is USD345.

b. FOB = FOBC5%×(1−5%) = 100×95% = USD95

CFR = FOB+Freight = 95×3.45 = USD98.45

CIF = CFR/(1−U×R) = 98.45/(1−110%×1.2%) = USD99.77

CIFC5% = CIF/(1−5%) = 99.77/95% = USD105.02

Answer: The CIFC5% price is USD105.02

c. Insurance Amount = CIF×(1+10%)×100 cases

= 99.77×1.1×100 = USD10,975

Answer: The insurance amount is USD10,975.

d. Premium = Insurance Amount×R = 10,975×1.2% = USD132

Answer: The insurance premium is USD132.

2) Solution:

Export Cost for Foreign Exchange

$$= \frac{\text{Export Cost in Local Currency}}{\text{Export Revenue in Foreign Currency}}$$

$$= \frac{1,800\times(1+17\%)}{\text{CIF}-\text{F}-\text{I}} = \frac{1,800\times117\%}{500-70-6.5}$$

$$= 4.97$$

$$\text{Export profit margin} = \frac{\text{Export revenue (FOB)} - \text{Export cost (FOB)}}{\text{Export revenue (FOB)}}\times100\%$$

$$= \frac{(500-70-6.5)\times6.5-1,800\times(1+17\%)}{(500-70-6.5)\times6.5}\times100\%$$

$$= 23.49\%$$

Answer: The cost of foreign exchange of the deal is 4.97 and its profit margin is 23.49%.

VI. Case study（20%）

1）The bank can refuse to pay.

Letter of credit is a document independent of sales contract. As long as the documents required are "on their face" in line with the letter of credit, the issuing bank will make payment. In this case, the L/C amount was USD30,000 which indicated the maximum amount that the issuing bank promised to pay the beneficiary. However, the draft presented by the exporter was for the amount of USD30,600 which exceeded the L/C amount. Therefore, even if the quantity of the actual goods delivery was within the scope of the 3% more or less specified in the contract, the bank can refuse to pay the seller.

2）We, the exporter should not make shipment as requested since the contract was not established yet.

Our acceptance of July 24th is actually a late acceptance. According to CISG 1980, a late acceptance is not effective as an acceptance unless the offeror, without delay, dispatch a notice to the effect that the late acceptance is regarded as effective. In this case, Company B made no response to our late acceptance which indicated that our late acceptance was considered ineffective. Thus the original offer became void and our late acceptance constituted a new offer. Consequently, no contract was established. Therefore, we should not make shipment and could sell the goods at a much better market price.

Key to Model Test 3

I. Translate the following terms into Chinese or English.（**20%**）

1）预支信用证　　2）银行汇票
3）付款交单　　4）2020 年国际贸易术语解释通则
5）外来风险　　6）工会班轮
7）租船契约　　8）尺码吨
9）毛重　　10）清洁提单
11）non-firm offer　　12）open credit
13）sale by actual quality　　14）telegraphic transfer
15）warehouse to warehouse clause　　16）revocation of an offer
17）reciprocal credit　　18）quality tolerance
19）packing loan　　20）perils of the sea

II. Read the following statements and if it is true put a "T", otherwise an "F".（**10%**）

1）~ 5）F F T F F　　6）~10）T F F T F

III. Choose the best（**only one**）**answer for each question.**（**15%**）

1）~5）D D D B A　　6）~10）C B D A D　　11）~15）C B B C C

IV. Short answer question：（**15%**）

1）Similarity：Both credits are used by middlepersons to protect their interest.

Differences：

a. Transferable credit allows the first beneficiary to transfer the whole or part of the original credit to the second beneficiary(ies)；only one credit is issued.

b. Back to back L/C allows the beneficiary to use the first L/C to open a new L/C to the second beneficiary. Two credits are used.

c. Transferable credit can be transferred, while back to back credit requires the first credit to be non-transferable.

d. The degree of protection to the middleperson is different. Transferable credit may allow the end supplier to know about the applicant-the end buyer；while back to back credit has the middleperson as the applicant of the second credit, the information about both the end buyer and end supplier are well kept.

2）a. arrival contract terms and shipment contract terms.

b. Major difference is that arrival contract terms allow the seller to transfer his risk to the

buyer only when the goods arrive at the destination; while shipment contract terms allow the seller to have his risk transferred at the time of shipment.

3) The typical steps along the arbitration procedure include:

a. applying for arbitration;

b. forming arbitration tribunal;

c. hearing of an arbitration case;

d. issuing an award;

e. setting aside an award;

f. enforcing an award.

V. Calculation:(20%)

1) Solution:

Insurance amount = CIF×110% = 1, 250, 000×110% = USD1, 375, 000

Insurance premium = Insurance amount×Premium rate

= 1, 375, 000×0. 25%

= USD3, 437. 5

Answer: The insurance amount is USD1, 375, 000 and the premium is USD3, 437. 5.

2) Solution:

CFR = CIF×(1−110%×R)

= 2, 000×(1−110%×0. 7%)

= USD1, 984. 6

Answer: The CFRDubai price would be USD1, 984. 6 per M/T.

VI. Case study (20%)

1) a. First explain the feature of using D/P T/R. D/P at sight allows the buyer to get the documents only when he makes immediate payment. By using D/P T/R the buyer would be able to use a Trust Receipt to borrow documents from the collecting bank and pay in a future date.

b. Then explain the possible reason for the Japanese buyer to make this proposal. If D/P after sight is used and the Japanese buyer could nominate the collecting bank, possibly he would nominate a bank with which he has good relationship and then use the T/R to borrow the documents. This can provide him a way of financing.

2) The deal with the French company: The seller should take the loss.

a. It is clear that the loss happened before the goods were loaded on board the vessel. According to CIF stipulation, it is the seller who should bear the risk of the goods.

b. Under CIF contract it is the seller who obtains insurance. However, in this deal the seller was not entitled to compensation from the insurance although he had an insurable interest.

c.The reason is that the goods got damaged because of the hot weather. In summer 35 degree is normal temperature, and the goods were damaged due to its own nature, or inherent vice. This is one of the exclusions of insurance coverage, insurance company had no reason to compensate.

The deal with Saudi Arabian company: The buyer should take the loss.

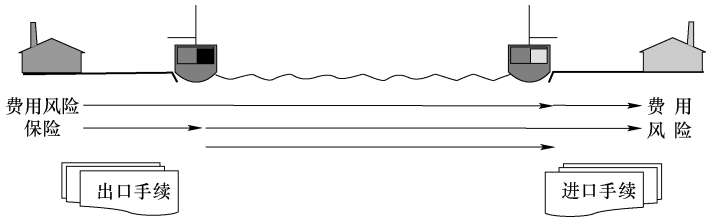
a.It is clear that the loss happened after the goods were loaded on board the vessel. According to CIF stipulation, it is the buyer who should bear the risk of the goods.

b.At the time of loss, the buyer had an insurable interest, but he was not entitled to compensation from the insurance although he had an insurable interest.

c.The reason is same as that of the French deal. The goods were damaged due to inherent vice. Insurance company had no reason to compensate.

Appendix 1　INCOTERMS 2020（CIF）

CIF——成本、保险费加运费
（填入指定目的港）



用户解释说明

1. 交货与风险——“成本，保险费加运费”是指卖方通过以下方式向买方完成交货：

✍ 将货物装上船

✍ 或者取得已经如此交付的货物。

货物灭失或损坏的风险在货物交到船上时发生转移，这样卖方即被视为已履行了交货义务，而无论货物是否实际以良好的状态、约定的数量或是否确实到达目的地。

2. 运输方式——本规则仅适用于海运或内河水运运输方式。如果使用多种运输方式（常见于货物在集装箱终端交给承运人的情形），则适合使用的规则是 CIP，而非 CIF。

3. “或取得已经如此交付的货物”——此处的“取得”一词适用于交易链中的多层销售（链式销售），在大宗商品贸易中尤其常见。

4. 交货港与目的港——在 CIF 中，两个港口很重要：货物交到船上的港口和约定为目的港的港口。当货物在装运港装上船或者以取得已经如此交付的货物的方式交付给买方时，风险即从卖方转移到买方。但是，卖方必须签订将货物从交货地运送往约定目的地的运输合同。因此，例如，货物在上海（港口）装船、运往南安普顿（也是港口）。货物在上海装到船上时交付，风险于此时即转移给买方；而卖方必须签订从上海到南安普顿的运输合同。

5. 必须指定装运港吗？——尽管合同中总会约定一个目的港，但却未必会指定装运港，而装运港是风险转移给买方的地方。如果装运港对买方具有特殊意义，例如，买方也许希望借以确定货物价格中的运费构成是否合理，那么特别建议双方在合同中尽可能清楚地指定装运港。

6. 确定卸货港的终点——特别建议双方尽可能精准地指定目的港的特定地点，因为卖方需承担将货物运往该地点的费用。卖方必须签订涵盖货物运输的一份或多

份合同，包括从货物交付到运至指定港或销售合同中已约定的该港口范围内约定地点。

7. 多个承运人——海运运输的不同航段可能由不同的承运人负责，例如，货物先由承运人驾驶支线船舶从香港运到上海，再由远洋船舶从上海运到南安普顿。此时产生的问题在于，风险是在香港还是上海从卖方转移到买方：交货发生在哪里？买卖双方很可能已在销售合同本身中进行了约定。但是，如果无此约定，则默认的立场是风险在货物交付给第一个承运人时发生了转移，即，香港，因此这延长了买方承担灭失或损坏风险的时间。如双方希望风险晚些转移的话（此例的上海），则他们需要在销售合同中予以明确。

8. 保险合同——卖方还必须签订保险合同，以对由买方承担的从装运港至少到目的港过程中货物灭失或损坏的风险投保。如目的地国家要求在本地购买保险，则可能会造成困难：在此种情况下，双方应考虑使用 CFR。买方还应注意，在 CIF Incoterms® 2020 规则下，卖方需要投保符合《伦敦保险协会货物保险条款》（C）款或其他类似条款下的有限的险别，而不是《伦敦保险协会货物保险条款》（A）款下的较高险别。但是，双方仍然可以约定较高的险别。

9. 卸货费用——如果卖方根据运输合同产生了在目的港内指定地点与卸货相关的费用，除非双方另有约定，卖方无权另行向买方追偿该项费用。

10. 出口/进口清关——如适用，CIF 要求卖方办理货物出口清关。但是，卖方没有义务办理货物进口清关或经由第三国过境的清关、支付任何进口税或办理任何进口海关手续。

A 卖方的义务

A1 一般义务

卖方必须提供符合销售合同约定的货物和商业发票，以及合同可能要求的其他与合同相符的证据。

卖方提供的任何单据，根据双方约定可以是纸质或电子形式，如果没有约定，则按照惯常做法提供。

A2 交货

卖方必须以将货物装上船，或者以取得已经如此交付的货物的方式交货。在这两种情况下，卖方均必须在约定日期或期限内，按照在该港口的习惯方式交货。

A3 风险转移

除按照 B3 的灭失或损坏的情况外，卖方承担按照 A2 完成交货前货物灭失或损坏的一切风险

A4 运输

卖方必须签订或取得运输合同，将货物自交货地内的约定交货点（如有），运送至指定目的港，或位于该港内的任何交货点（如已约定）。运输合同必须按照惯常条款订立，由卖方承担费用，经由通常航线，用通常用于运输该类所售货物的船舶运送货物。

卖方必须遵守运送至目的地过程中任何与运输有关的安全要求。

A5 保险

除非另有约定或特定贸易中的习惯做法，卖方须自付费用取得货物保险。该保险需符合《协会货物保险条款》（Institute Cargo Clauses，LMA/IUA）条款（C）或任何适用于货物运输方式的类似条款。保险应与信誉良好的承包人或保险公司订立，并应使买方或任何其他对货物具有可保利益的人有权直接向保险人索赔。

当买方要求且能够提供给卖方任何所需的信息时，卖方必须提供任何附加险，由买方承担费用，如果能够办理，诸如符合《协会战争险条款》（Institute War Clauses）及/或《协会罢工险条款》（Institute Strikes Clauses，LMA/IUA）或任何其他类似条款相符合的险别（除非该险别已经包括在前款所述的货物保险中。）

最低保险金额应是是合同规定价格另加 10%（即 110%），并应采用合同货币。

保险范围应从货物自 A2 规定的交货点起，至少至指定的目的港止。

卖方必须提供给买方保险单或保险证明或其他投保证据。

此外，在应买方要求并由其承担风险和费用的情况下，卖方必须向买方提供买方取得任何额外保险所需信息。

A6 交货/运输单据

卖方必须承担费用，向买方提供运至约定目的港的惯常运输单据。

该运输单据必须载明合同货物，且其签发日期必须在约定的运输期限内，还必须能使买方在目的港凭此向承运人索取货物，并且除非另有约定，须能使买方通过向其下家买方转让该单据或通知承运人来转卖在途货物。

当此运输单据以可转让形式签发并有数份正本，全套正本必须向买方提交。

A7 出口/进口清关

a）出口清关

如适用，卖方必须办理出口国要求的所有出口清关手续并支付费用，例如：

- 出口许可证；
- 出口安检清关；
- 装运前检验；及
- 任何其他官方授权。

b）协助进口清关

如适用，应买方要求并由其承担风险和费用，卖方必须协助买方获取任何过境国或进口国需要的与所有过境/进口清关手续有关的任何单据及/或信息，包括安全要求和装运前检验。

A8 查验/包装/标记

卖方必须支付为了按照 A2 交货所需要进行的查验费用（如查验品质、丈量、计重、点数的费用）。

卖方必须自付费用包装货物，除非该特定贸易运输的所售货物通常无需包装。除非双方已经约定好具体的包装或标记要求，否则，卖方必须以适合该货物运输的方式对货物进行包装和标记。

A9 费用划分

卖方必须支付：

a）按照 A2 完成交货之前与货物相关的所有费用，按照 B9 应由买方支付的费用除外；

b）按照 A4 所发生的运费和所有其他费用，包括货物装船费用及与运输相关的安全费用；

c）根据运输合同规定应由卖方所承担的在约定卸货港产生的任何卸货费用；

d）根据运输合同应由卖方承担的过境费用；

e）按照 A6 向买方提供已经交货的通常证据的费用；

f）按照 A5 产生的保险费用；

g）如适用，按照 A7（a）办理出口清关有关的关税、税款和任何其他费用；以及

h）买方为按照 B7（a）提供协助获取单据及信息相关的所有费用和开支。

A10 通知

卖方必须向买方发出已按照 A2 完成交货的通知。

卖方必须向买方发出买方收取货物任何所需的通知以便使买方收取货物。

B 买方的义务

B1 一般义务

买方必须按照销售合同约定支付货物价款。

买方提供的任何单据，根据双方约定可以是纸质或电子形式，如果没有约定，则按照惯常做法提供。

B2 收取货物

当卖方按照 A2 交货时，买方必须提取货物，并在指定目的港自承运人处收取货物。

B3 风险转移

买方承担按照 A2 交货时起货物灭失或损坏的一切风险。

如买方未按照 B10 发出通知，则买方承担自约定交货日期或约定交货期限届满之时起的货物灭失或损坏的一切风险，但以该货物已清楚地确定为合同项下货物为前提条件。

B4 运输

买方对卖方没有订立运输合同的义务。

B5 保险

买方对卖方没有订立保险合同的义务。但是，应卖方要求，买方必须向卖方提供卖方按照 A5 要求的投保任何附加险所需的信息。

B6 交货/运输单据

如果运输单据与合同相符，买方必须接受按照 A6 提供的运输单据。

B7 出口/进口清关

a）协助出口清关

如适用，应卖方要求并由其承担风险和费用，买方必须协助卖方取得出口国需要的与所有出口清关手续有关的任何单据及/或信息，包括安全要求和装运前检验。

b）进口清关

如适用，买方必须办理任何过境国和进口国要求的所有手续并支付费用，例如：

✍ 进口许可证及过境所需的任何许可证；

✍ 进口及任何过境安检清关；

✍ 装运前检验；及

✍ 任何其他官方授权。

B8 查验/包装/标记

买方对卖方没有义务。

B9 费用划分

买方必须支付：

a）按照 A2 完成交货之时起与货物相关的所有费用，按照 A9 应由卖方支付的费用除外；

b）过境费用，除非根据运输合同该项费用应由卖方承担；

c）包括驳运费和码头费在内的卸货费用，除非根据运输合同该项费用应由卖方承担；

d）应买方要求，按照 A5 和 B5 投保附加险所发生的费用；

e）卖方为按照 A5 及 A7（b）提供协助获取单据及信息相关的所有费用和开支；

f）如适用，按照 B7（b）办理过境或进口清关有关的关税、税款和任何其他费用；以及

g）由于未按照 B10 发出通知而产生的自约定交货日期或自约定交货期限届满之时起的任何额外费用，但以该货物已清楚地确定为合同项下货物为前提条件。

B10 通知

无论何时根据约定，买方有权决定运输时间及/或指定目的港的收货点，买方必须给予卖方充分通知。

Appendix 2　CISG 1980（Part II）
Formation of the Contract

第二部分　合同的订立

第十四条

（1）向一个或一个以上特定的人提出的订立合同的建议，如果十分确定并且表明发价人在得到接受时承受约束的意旨，即构成发价。一个建议如果写明货物并且明示或暗示地规定数量和价格或规定如何确定数量和价格，即为十分确定。

（2）非向一个或一个以上特定的人提出的建议，仅应视为邀请做出发价，除非提出建议的人明确地表示相反的意向。

第十五条

（1）发价于送达被发价人时生效。

（2）一项发价，即使是不可撤销的，得予撤回，如果撤回通知于发价送达被发价人之前或同时，送达被发价人。

第十六条

（1）在未订立合同之前，发价得予撤销，如果撤销通知于被发价人发出接受通知之前送达被发价人。

（2）但在下列情况下，发价不得撤销：

（a）发价写明接受发价的期限或以其他方式表示发价是不可撤销的；或

（b）被发价人有理由信赖该项发价是不可撤销的，而且被发价人已本着对该项发价的信赖行事。

第十七条

一项发价，即使是不可撤销的，于拒绝通知送达发价人时终止。

第十八条

（1）被发价人声明或做出其他行为表示同意一项发价，即是接受，缄默或不行动本身不等于接受。

（2）接受发价于表示同意的通知送达发价人时生效。如果表示同意的通知在发价人所规定的时间内，如未规定时间，在一段合理的时间内，未曾送达发价人，接受就成为无效，但须适当地考虑到交易的情况，包括发价人所使用的通讯方法的迅速程序。对口头发价必须立即接受，但情况有别者不在此限。

（3）但是，如果根据该项发价或依照当事人之间确立的习惯作法和惯例，被发价

人可以做出某种行为，例如与发运货物或支付价款有关的行为，来表示同意，而无须向发价人发出通知，则接受于该项行为做出时生效，但该项行为必须在上一款所规定的期间内做出。

第十九条

（1）对发价表示接受但载有添加、限制或其他更改的答复，即为拒绝该项发价，并构成还价。

（2）但是，对发价表示接受但载有添加或不同条件的答复，如所载的添加或不同条件在实质上并不变更该项发价的条件，除发价人在不过分迟延的期间内以口头或书面通知反对其间的差异外，仍构成接受。如果发价人不做出这种反对，合同的条件就以该项发价的条件以及接受通知内所载的更改为准。

（3）有关货物价格、付款、货物质量和数量、交货地点和时间、一方当事人对另一方当事人的赔偿责任范围或解决争端等等的添加或不同条件，均视为在实质上变更发价的条件。

第二十条

（1）发价人在电报或信件内规定的接受期间，从电报交发时刻或信上载明的发信日期起算，如信上未载明发信日期，则从信封上所载日期起算。发价人以电话、电传或其他快速通讯方法规定的接受期间，从发价送达被发价人时起算。

（2）在计算接受期间时，接受期间内的正式假日或非营业日应计算在内。但是，如果接受通知在接受期间的最后 1 天未能送到发价人地址，因为那天在发价人营业地是正式假日或非营业日，则接受期间应顺延至下一个营业日。

第二十一条

（1）逾期接受仍有接受的效力，如果发价人毫不迟延地用口头或书面将此种意见通知被发价人。

（2）如果载有逾期接受的信件或其他书面文件表明，它是在传递正常、能及时送达发价人的情况下寄发的，则该项逾期接受具有接受的效力，除非发价人毫不迟延地用口头或书面通知被发价人：他认为他的发价已经失效。

第二十二条

接受得予撤回，如果撤回通知于接受原应生效之前或同时，送达发价人。

第二十三条

合同于按照本公约规定对发价的接受生效时订立。

第二十四条

为公约本部分的目的，发价、接受声明或任何其他意旨表示“送达”对方，系指用口头通知对方或通过任何其他方法送交对方本人，或其营业地或通信地址，如无营业地或通信地址，则送交对方惯常居住地。

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