

普通高等教育经管类专业“十三五”规划教材

国际贸易实务

(英文版)

INTERNATIONAL BUSINESS PRACTICES

景楠 主编 王丽 副主编



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内 容 简 介

全书分为十二章,以外贸出口实践的一系列环节和步骤为主题,从第一章进出口贸易业务联系的最初环节开始,到第九章外贸出口核销退税结束,中间穿插了第三、四、五章,分别是关于国际贸易术语解释、付款方式和装船单据等必要的基本知识。除此之外,本书有补充内容,这些内容目前市面上绝大多数教材还没有或阐述深度不够,也是本书有别于其他同类教材的重要区别之一,它们分别是:第十章外贸成本核算(目前外贸企业实际运作中常用的进出口成本核算,其他书无此专业内容),第十一章期货常识(全能业务员必备),第十二章网络贸易和电子商务,以及附录部分。

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Chapter 1

International Business Negotiation

1

1.1 Introduction

In the international trade, to find and develop appropriate customers is the key to successful international business transactions. If both parties value credibility and are dedicated to striking a deal, the subsequent transaction will be carried out easily. Therefore, making full preparations for effective establishment of business relationship by identifying customers from various means is the first essential step of a successful business.

1.2 Five Ways to Find Customers

1. Existing Customer Referral

Existing customers can be contacted to land referrals.

2. Professional Journals and Magazines

Information of potential customers can be located by consulting professional journals and magazines.

3. Internet

Internet is a very efficient way of establishing business contact in modern society. A lot of useful information can be obtained by logging on relevant websites or searching through YAHOO or GOOGLE.

4. Government Organizations

Many government organizations, such as the Trade Development Council in Hong Kong, provide means for the identification of potential customers, which are especially helpful in facilitating small and medium-sized enterprises to expand their overseas market. Hong Kong and Singapore, for instance, are known for such administrative commitment and success.

5. Trade Fairs or Expositions

Participating in trade fairs or expositions is a great way to network with other businesses that may fit your market or generate new customers. Even if you do not make a sale, such events can allow you to build your contact list.

1.3 General Procedures of Business Negotiation

Business negotiation plays an essential role in the process of international trade. It concerns the agreement made between the seller and the buyer on areas such as price, payment, packing, shipment, in addition to other terms or conditions of a sale. Business negotiations can be carried out either in writing or orally. In the former case, messages are usually sent by letter, fax or e-mail. In the latter case, traders discuss relevant issues in a face-to-face manner or by telephone. Different business negotiation normally involves four steps: Enquiry, Offer, Counter-offer and Acceptance. Although it is unnecessary to go through all the steps for every transaction, Offer and Acceptance are two critical ones indispensable to the conclusion of a contract.

1. Enquiry

An enquiry is a request for business information with regard to the goods to be transacted, the quality, specifications, samples, quantity, price, shipment and other details about trade terms and conditions. Most enquiries are made about price, and the price estimate provided by the seller is usually referential, which is not sufficient for offer to take place. As exploratory business contacts, enquiries can be made by either the seller or the buyer and has no legal binding for both parties.

For example, a foreign customer may make an enquiry by fax to a Light Industrial

Products Import & Export Company in China:

“BOOKABLE MAXAM BRAND DENTAL CREAM LARGE SIZE MAX10,000 GROSS PLS CBL LOWEST PRC EARLIEST DELIVERY TIME”.

Nevertheless, sometimes a seller can also initiate the negotiation by making an enquiry to a foreign buyer, expressing his intention of selling certain goods, which is also called an invitation to offer or invitation to make a bid. For example, the Light Industrial Products Import & Export Company may send a fax to a foreign company:

“CAN SUPPLY MAXAM DENTAL CREAM USD0.50 PRICE MARSHPMT CBLREP IF INTERESTED”.

It is worth noting that whoever makes an enquiry is not liable for the buying or the selling; likewise, the receiver is not obliged to reply. However, according to customary practice, the receiver of an enquiry is expected to respond without delay in the form of a quotation, an offer or a bid. An enquiry can be sent out to several potential clients simultaneously. In this way, the enquirer can make a comparison between the terms of sales stated in the different replies and choose to trade with the one who has quoted or offered the best terms.

For exporters, promotional efforts should be made to attract enquirers abroad and a host of different strategies can be incorporated to this end. For instance, the sellers can increase the awareness of their products through an advertising campaign, attending trade fairs, or engaging in public relations to build inroads with their potential clients. Follow-up enquiries made in the wake should be replied at the earliest time possible.

For importers, they should pay attention to the following points when making an enquiry.

Firstly, although an enquiry can be made to one or more suppliers simultaneously, the importer should not give away his intentions; otherwise, the suppliers will sense that he is in urgent demand for the goods.

Secondly, when making an enquiry, the buyer may ask for more information besides the prices of the goods, such as the specifications, packing, delivery, samples, etc.

Thirdly, information should be delivered in a brief, specific, courteous and reasonable manner. Corresponding replies should be prompt, definite and helpful.

Making an enquiry is the first step in the business negotiation; however, it is not an essential one. For instance, if both parties have already established stable business partnership, offer can be sent out without the presence of an enquiry.

Information exchanged at this stage is not legally binding, yet after the contract is concluded, the contents of the enquiry can be taken as an integral part of the document and be

used as evidence to solve any disputes arising in the performance of the contract.

2. Offer

(1) *Definition and Features of an Offer*

An offer is a proposal of trading terms and conditions put forward in a contract by one party (the offeror) to the other party (the offeree), in which the offeror proposes to conclude business with the offeree. An offer can be made by a seller, and in this case it is called a selling offer. An offer can also be made by a buyer, which is termed a buying offer or bid. According to the United Nations Conventions on Contracts for the International Sale of Goods, Article 14(1), “a proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance”. In line with this stipulation, a lawful offer should meet the following conditions.

1) **There will be at least one specified offeree.**

The specified offeree can be a person or a company. This condition distinguishes offer-making from other promotional acts such as distributing advertisements and price lists. In fact, countries differ from each other in terms of their legislative stipulations concerning whether distributing commercial advertisements sent to the public should be regarded as identical to the act of offer-making. In China and North Europe, for instance, making offers and advertising are viewed as distinctly different business activities, whereas the U.K. and U.S. are less stringent with respect to the differences of the two activities, maintaining that under certain circumstances, an advertisement is identical to an offer. According to the United Nations Conventions on Contracts for the International Sale of Goods, Article 14(2), “a proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal”. However, an advertisement will not be regarded as an offer unless the information conveyed by it contains all the essential traits of an offer, and makes announcements such as “This advertisement constitutes an offer” or “Goods contained in this advertisement will be sold to the first payer or the first person who opens a letter of credit”.

In light of the differences identified above, care should be exercised when issuing commercials or sending out price lists for fear that the offeree might have negative impression of the message. Therefore, it is recommended to add to the message words such as “can be adjusted at any time without notice” or “required by our final confirmation” to avoid misunderstanding and confusion.

2) All the contents in the offer should be definite.

As is stipulated in the United Nations Conventions on Contracts for the International Sale of Goods, Article 14(1), contents in an offer must be sufficiently definite. Being definite entails that the proposal made in the offer must include three parts: a) the name of the goods, b) specification of the methods used, either explicitly or implicitly, to determine the quantity of the goods, and c) specification of the methods used, either explicitly or implicitly, to determine the price of the goods. Proposal involving all the three essential factors would constitute a lawful offer. If that offer is accepted by the offeree, the contract will be concluded.

It is an ideal situation in which the offeror knows exactly the price and quantity of the goods to be transacted. In practice, however, there might be chances when the quantity and price of the goods concerned cannot be determined until the time of delivery. For instance, for future delivery, the seller and the buyer might adopt a flexible pricing method to avoid the risk of price fluctuation. In this case, both parties agree upon a pricing method, instead of pinpointing a specific price.

It is important to note at this point that an offer will be considered definite although terms concerning delivery date, place and payment may not be included. After the establishment of the contract, both parties can make up for such missing information according to their usual practice or follow international conventions such as the United Nations Conventions on Contracts for the International Sale of Goods.

Different countries have different stipulations concerning what constitutes an offer. Some countries require complete, clear and definite description of the major issues involved in a contract, such as the name of the goods, quality, quantity, packing, price, delivery date and place, and payment, leaving no room for reservations. This is to ensure that the offer will be valid for concluding a binding contract when it is received. The article concerning the content of an offer in the United Nations Conventions on Contracts for the International Sale of Goods merely stipulates the minimum requirements for an offer. In practice, if the description of trade terms in an offer is insufficient or too vague, conflicts may arise when the contract is being performed. Therefore, it is always recommended that major trade terms such as name of the goods, quality, quantity, price, payment, delivery date and place be specified before an offer is sent out.

3) Once the offer is accepted, it will be binding for the offeror.

An offer is a proposal for both parties to enter into a contract. If an offeror is only discussing certain trade terms with the offeree without indicating legal commitment, this will

not be regarded as an offer. Specifically, a proposal containing words such as “for reference only”, “the information is subject to final confirmation” or other reservations does not constitute an offer; rather, it is an invitation of offer.

(2) *The Duration of an Offer*

The duration of an offer refers to the time limit for the offeree to accept the offer. If the offeree fails to accept the offer within its validity, the offeror will be exempt from any responsibilities mentioned in the offer. When the duration of an offer is not specified, the offeree is expected to accept within a reasonable time limit. According to the United Nations Conventions on Contracts for the International Sale of Goods, for an oral offer, the offeree should accept immediately; otherwise, it will be considered invalid.

When an offer is made in the written form, the offeror usually specifies its time validity. This can be done in the following ways.

1) Specify the Latest Time of Acceptance

For instance, the offeror might write something to the effect that “The offer is subject to your reply reaching here by May 6th, 2016”. Some countries stipulate that the offeree should send out the reply before the required date at local time. However, for international traders, the reply is normally expected to reach the offeror before May 6th, 2016, and in this case, the offeror’s local time should be observed.

2) Specify a Period of Time for Acceptance

For instance, the offeror might include in the offer information such as “The offer is valid/open/effective for 5 days” or “Please reply within 8 days”. As is stipulated by the United Nations Conventions on Contracts for the International Sale of Goods, the time period starts with the date specified in the letter or the postmark. When fax is used as the means of communication, the time period begins at the offeree’s reception of the offer. The last day of the time limit on an official holiday or weekends should be postponed to the first working day. In addition, local time differences should be taken into account.

(3) *Time Validity, Withdrawal and Revocation of an Offer*

1) Time Validity of an Offer

According to the United Nations Conventions on Contracts for the International Sale of Goods, Article 15, an offer becomes effective when it is received by the offeree. It is of critical importance to specify the date for an offer to be valid because of the following two reasons.

First, such information can be consulted to determine whether an offer is accepted as an offer becomes valid only when it reaches the offeree, which is the precondition for a contract to

be concluded. In other words, even if the offeree knows in advance the content of the offer as well as the date it is sent out, he cannot accept the offer before receiving it.

Secondly, the information can be consulted to determine when an offer can be withdrawn or revised. An offer, be it revocable or irrevocable, can be withdrawn or revised before it comes into effect as long as the notice of withdrawal or revision is sent to the offeree before or at the same time as the offer would be effective. After an offer is received by the offeree, it can only be revoked. Withdrawal and revocation are two different concepts. The withdrawal of an offer occurs before the offer is open whereas the revocation of an offer occurs after the offer becomes effective.

2) Withdrawal of an Offer

According to the United Nations Conventions on Contracts for the International Sale of Goods, an offer, even if it is irrevocable, can be withdrawn or revised before it comes into effect. Therefore, when an offeror wants to make any changes, he can resort to faster means of communication to notify the offeree before the original offer is accepted. This regulation highlights the importance for international traders to be aware of the exact dates of when the offer is sent out, and when it will be received. Then necessary measures can be taken when an offer needs to be withdrawn or revised.

3) Revocation of an Offer

As to whether an offer can be revoked, significant differences exist between Anglo-American and the Continental legal systems. Anglo-American law stipulates that before an offer is accepted, an offer can be revoked even if it has exceeded the specified time limit. By contrast, the Continental law holds that in principle, an offer has binding power over the offeror and cannot be withdrawn randomly. In Germany, for instance, it is stipulated that an offer cannot be withdrawn before it exceeds the last date of acceptance. The French law maintains that an offer can be withdrawn before being accepted; however, losses caused by such withdrawal are supposed to be made up by the offeror.

In order to balance such local differences, the United Nations Conventions on Contracts for the International Sale of Goods, Article 16, stipulates that an offer can be withdrawn before it comes into effect as long as the notice of withdrawal or revision is sent to the offeree before or at the same time as the offer would be effective. In other words, an offer cannot be withdrawn after it is accepted. The UN Conventions also stipulate that an offer cannot be withdrawn in two situations: a) the offer has set a limit for its time validity, or has expressed in other ways that it is irrevocable; b) the offeree has a reason to believe that the offer is irrevocable, and has taken

subsequent actions for offer acceptance.

(4) *The Termination of an Offer*

An offer can be terminated under certain circumstances. The following reasons are in most cases accountable for the termination of an offer.

- The offer is overdue.
- The offer has been lawfully withdrawn or revoked by the offeror.
- The offer is rejected or counter-offered.
- There appears Force Majeure such as government prohibition of the goods.
- The offeror or the offeree becomes incapable of any legal transactions due to mental illness, etc.

3. Counter-offer

A counter-offer is, to some extent, the rejection of an offer. It is made when the offeree partially or totally disagrees with what is specified in the offer and puts forward amendments, limitations and modifications and other changes about the terms and conditions of the offer. When the changes suggested by the offeree are concerned with the price of the goods, payment, quality, quantity, delivery date and place, liability of damages and ways to settle disputes, these changes would be regarded as substantial conditions, rendering hence the original offer null.

Specifically, the United Nations Convention on Contracts for the International Sale of Goods, Article 19, stipulates that “a reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer”. However, the reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer still constitutes an acceptance. Additional or different terms relating to the price, payment, quality and quantity of the goods, place and time of delivery, liability of damages and the settlement of disputes are considered to alter the terms of the offer materially.

Besides, to accept an offer under certain conditions is also regarded as a counter-offer. For instance, when an offeree’s reply is attached with words like “subject to final confirmation” or other additional requirements, the reply will be considered a counter-offer. When the content of the reply suffices to the conditions and terms essential to an offer, the reply will simply be considered a new offer; otherwise, it is simply an invitation of an offer. In the latter case, the original offeror becomes the offeree, and is eligible to exercise acceptance, rejection or counter-offer.

Below is a sample of counter-offer sent via fax and letter respectively.

YC15TH COUNTER-OFFER USD TEN PER TON CFR LONDON REPLY HERE 18TH

Dear Mr. David,

We are writing to acknowledge the reception of your letter dated on June 21, 2005, offering us 12,000 M/T China soybean at US \$ 280 per ton on the usual terms.

We are sorry to inform you that our buyers in Japan find your price too high, because the soybean from Korea being sold here is 10% lower in price than yours.

So we will purchase 10,000 ton if you could accept our price of US \$ 270 M/T CFR C5 London, a price that can be accepted by companies from many Southeast Asian countries. Since the prices on the market are relatively lower, we hope you will favorably consider the possibility of offering a discount. We are looking forward to your early reply.

Yours Faithfully,

Ollie

4. Acceptance

(1) Definition and Features of Acceptance

1) Definition of Acceptance

Acceptance, normally expressed in form of a statement or other conduct of the offeree, is a commitment to accepting the terms and conditions designated in an offer. In essence, it is an assent made on the part of the offeree, indicating unconditional acceptance of an offer. Acceptance can be delivered in various formats. According to the United Nations Convention on Contracts for the International Sale of Goods, acceptance of an offer can be expressed either verbally or in writing. Silence or inactivity, however, by no means amounts to an acceptance. In other words, if an offeree fails to reply in whatever ways upon reception of an offer, as he is not obligated by law to react, the offer will be deemed unaccepted. However, silence or inactivity, coupled with other factors that constitute sufficient evidence for the offeror to conclude that such reaction indicates assent to an offer, is considered an acceptance. Likewise, for two parties who have established long-term business relationship and have been regularly conducting transactions following mutually recognized conventions and terms, an acceptance is always assumed without additional notice. The buyer can place orders and sue the seller if he refuses to perform the contract.

2) Features of an Acceptance

A valid acceptance must demonstrate the following characteristics.

Firstly, the acceptance should be issued by the offeree, namely the person or organization that the offer is aimed at. If the intention is made by a third party, it will merely be viewed as a

new offer, rather than an acceptance.

Secondly, an acceptance must be unconditional. As is stipulated in the United Nations Convention on Contracts for the International Sale of Goods, a valid acceptance entails unreserved assent to all the terms designated in the offer. If the offeree accepts only partially what is included in the offer, has made substantive changes concerning the trading terms and conditions, or accepts the offer conditionally, this will not be regarded as an acceptance; rather, the offeree is making an offer. However, if the offeree has suggested some minor additions, limitations and modifications concerning the quantity, packing, etc., which are not refused by the offeror within a period of time, such a reply will also be considered an acceptance. In this case, the content of the offer should be revised accordingly in the final contract.

Thirdly, an acceptance will be deemed ineffective if the indication of assent does not reach the offeror within the fixed time period. If no fixed time limit is mentioned in the offer, the offeree is expected to accept it within a “reasonable” period of time. In light of the fact that “a reasonable period of time” is often interpreted differently, the offeror is advised to specify the time limit in the offer to avoid confusion and disputes.

Fourthly, an acceptance should be sent out in accordance with the requirements mentioned in the offer. If no requirements are made in the offer concerning the form of acceptance, the offeree can adopt the means of communication used by the offeror or a faster one.

3) Time Validity of an Acceptance

Acceptance is a legally binding act, different countries observe different rules with regard to when and how it becomes effective. The Anglo-American legal system stipulates that an acceptance becomes effective the moment it is posted or dispatched, whereas the Continental legal system observes that an acceptance is not effective until it reaches the offeror. According to the United Nations Convention on Contracts for the International Sale of Goods, Article 18(2), “an acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror”. If the acceptance is not sent to the offeror within the time limit, it becomes a late acceptance. It is universally acknowledged that late acceptance is invalid, which underlines the importance of timing when issuing an acceptance.

Besides, an acceptance becomes valid when the conduct of the offeree indicates assent of the offer. As is stipulated in the United Nations Convention on Contracts for the International Sale of Goods, Article 8(3), “if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed”, provided that the act is performed within certain period of time.

(2) *Late Acceptance*

Late acceptance is often viewed as a new offer by most countries. The United Nations Convention on Contracts for the International Sale of Goods, Article 8(3), however, has adopted a more flexible attitude towards the issue. In Article 21 (1), “a late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect”. If the offeror rejects late acceptance or the offeree fails to notify the offeror immediately, the acceptance will become invalid. The United Nations Convention on Contracts for the International Sale of Goods, Article 21 (2), stipulates that “if a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect”. This demonstrates whether a late acceptance can become effective is to a great extent dependent on the offeree’s attitude and response.

(3) *Withdrawal or Revision of an Acceptance*

As to acceptance withdrawal or revision, the United Nations Convention on Contracts for the International Sale of Goods is consistent with the principle observed by the Continental legal system, maintaining that “an acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective” (Article 22). Any revision or withdrawal made after an acceptance becomes effective will be considered a breach of the contract. As business people are operating in a world where highly sophisticated and developed means of communication are readily available, which renders timely withdrawal of acceptance almost impossible, one cannot be too careful to review the acceptance before sending it out.