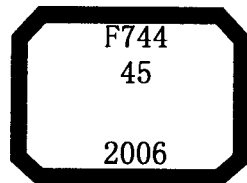


国际贸易惯例 案例解析

帅建林 编著 · 英汉对照

Case Study
of International
Trade Customs and Practices

对外经济贸易大学出版社



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[英汉对照]

帅建林 编著

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帅建林 编著

责任编辑: 王煜

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北京市朝阳区惠新东街 10 号 邮政编码: 100029

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内容提要

国际贸易惯例指国际贸易中的系列操作规范和管理条例,它在国际贸易实践中已经成为国际公则,其效力相当于法律。该英汉对照版本《国际贸易惯例案例解析》分四部分:国际贸易术语案例解析、货物销售合同公约案例解析、国际支付与结算惯例案例解析、国际货物运输规则案例解析。所选案例涉及国际货物贸易的各基本环节:合同磋商、货物包装、货物运输、货物保险、国际支付与结算等流程;案例解析应用《2000年国际贸易术语解释通则》(Incoterms 2000)、《联合国国际货物买卖合同公约》(CISG)、《跟单信用证统一惯例》(UCP500)、《托收统一规则》(URC522)、《海牙规则》(Hague Rules)、《维斯比规则》(Hague-Visby Rules)、《汉堡规则》(Hamburg Rules)等规则。案例分析引经据典,导引读者研读相关国际贸易惯例和规则,并依据这些准则来揭示和解决相应案例的症结,更好地理解 and 掌握并进而运用这些国际贸易惯例和规则于商务实践。

序 言

“中国在国际贸易中的份额不断增加,地位持续上升,已成为全球举足轻重的贸易大国。世界贸易组织如无中国参加,就失去其普遍性。”联合国副秘书长金永健先生如此评价中国参加世界贸易组织(WTO)的重要性和必然性。

中国仍将积极发展对外贸易,并促进对外贸易由以数量增加为主向以质量提高为主的转变。根据我国《国民经济和社会发展第十一个五年规划纲要》,到2010年我国货物贸易、服务贸易进出口总值将分别达到2.3万亿美元和4000亿美元。据海关总署2006年10月12日公布,今年1至9月我国外贸进出口总值12726.1亿美元,比去年同期(下同)增长24.3%。其中,出口6912.3亿美元,增长26.5%;进口5813.8亿美元,增长21.7%。2005年,我国贸易顺差突破千亿美元,对全年GDP实现9.9%的增长速度发挥了重要作用。我国加入WTO以及外贸经营权下放进一步激活了外贸行业,其贸易主体也随之发生了一些变化。据统计,我国具有出口实绩的中小企业从1999年的5万多家增加到2006年的17万多家。

来自教育部门的统计数据显示,在未来5年内国内拥有外贸进出口权的企业数量将达到36万家,是现在外贸企业数量的2倍,按每家新增企业需要5位外贸专才计算,就需要90万人。而中国每年高校外贸类毕业生不足5万,即使全部从事外贸工作,也只能培养出25万外贸人才,尚有60多万人才的缺口。为此,商务部鼓励高等院校设置包括商贸、经济、法律、外语、金融和管理等知识在内的商务专业,培养具有商务专门知识和技能的专门人才。各类外贸企业,尤其是中小民营外贸企业迅速增加,不但对外贸人才需求数量大大增加,而且对人才需求素质提出了新要求。

国际贸易活动是包括商贸、经济、法律、外语、金融和管理等知识的综合技能体现。贸易实务中,贸易争端不可避免,贸易陷阱处处存在。解决

贸易争端的依据是什么？是国际贸易惯例。国际贸易中的系列操作规范和管理条例，在国际贸易实践中已经成为国际公则。识别贸易陷阱的法宝是什么？是对国际贸易惯例的感悟、理解和综合运用，以及英语语言能力。

帅建林教授编著的这本英汉对照《国际贸易惯例案例解析》正是基于上述思考。中文版国际贸易案例书籍并不少见，但是中英文对照的类似书籍仍较少见。因此，该书旨在构建国际贸易活动的英语语境，帮助读者获得或增强直接使用英语从事国际贸易的能力。更难能可贵的是，该书对每一个案例的分析，其依据都落实到具体的国际贸易规则和条款；同时，又用相应的案例来解析具体的国际贸易惯例。这种“个案分析有据，条款解读有案例支撑”的创作模式使得案例分析和条款解读充分整合交融。通读该书，我有感于帅建林教授良好的复合型知识结构。

我很高兴在该书付梓之时为它作序。

施月海

中国国际贸易学会会长、研究员
2006年10月16日于北京

前 言

如何培养既精通经贸专业知识又具备熟练外语技能的复合型人才已成为当今中国学界相关学科和跨学科建设与教学的一大课题。“经贸+外语”的双语教学也好，“外语+经贸”的复合型培养模式也罢，其命题是相同的，其实现途径是相似的，其效果是接近的。该英汉对照版本《国际贸易惯例案例解析》正是基于上述命题，试图帮助读者在英语语境中系统学习、感悟和掌握重要国际贸易惯例的疑难点，增强其直接使用英语从事国际贸易、识别贸易陷阱和解决贸易争端的能力。

在国内，《国际贸易案例集》之类的书并不少见，但它们大都是中文编写的，无法满足经贸加外语的复合型人才模式的需要，无法实现该模式的培养目标。而此类英文版或英汉对照版本书籍在国内尚少。因此，该英汉对照版本《国际贸易惯例案例解析》正是应这一时代浪潮催生而成，想必读者会明白该书所被赋予的使命。在本书的编译过程中，本人深感学力不足，难以胜任此项工作。因为国际条约的严肃性，编者常常对规则原文字斟句酌，不敢有丝毫倦怠；案例筛选、译文处理、术语敲定，一直折磨着编者。书稿交出后，顿时如释重负，长舒一口气。然而，译文中的每一次修改、术语的推敲等情景仍然挥之不去，令编者诚惶诚恐，担心有所疏漏和差错。怀着如此责任感和勇气，编者将此书呈献给读者，企盼给予评价和指点。

本书的编写体例是案例、案例分析。在案例分析中，编者引经据典，导引读者研读相关国际贸易惯例和规则，并依据这些准则来揭示相应案例的结症，让读者能更好地理解 and 掌握并进而学会运用这些国际贸易惯例和规则于商务实践。该书有以下几个特点：

一、英汉对照。英文部分可帮助读者熟悉和掌握国际贸易实务中的专业词汇以及常见业务的英语表达方式，以提高语言技能；对应的汉语部分可帮助读者加深对英文案例的理解。

二、案例筛选具有典型性。书中所选案例均属相应类别的典型案例,是商界在国际贸易实务中常常碰到的棘手难题。

三、紧扣国际贸易业务程序。本书的编排基本按照国际贸易实务的流程。案例涵盖了从合同的商订阶段的贸易术语,到合同履行阶段的商品质量、数量、规格、包装、货运、保险以及国际支付与结算的各个环节,从而使本书具备相当的系统性和可操作性。

四、与现行的国际贸易惯例和规则紧密结合。本书案例分析所应用的相关惯例和规则涉及《2000年国际贸易术语解释通则》(Incoterms 2000)、《联合国国际货物买卖合同公约》(CISG)、《跟单信用证统一惯例》(UCP500)、《托收统一规则》(URC522)、《海牙规则》、《维斯比规则》、《汉堡规则》等。本书适用于高等院校经贸专业和商务英语专业学生、经贸类专业人士及相关从业人员。

由于编者水平有限,错误疏漏在所难免,热望同行专家与读者批评指正。编者电子邮箱:shuai@swufe.edu.cn。

编者
2006年10月

Contents

目 录

Part 1 Case study of international rules on trade terms

- commonly used** (1)
- 【 Case 1】 Damage caused by a fire accident in EXW contract (1)
- 【 Case 2】 Buyer's delaying to send vessel under FOB (4)
- 【 Case 3】 CFR & shipping notice (5)
- 【 Case 4】 CFR & goods quality (7)
- 【 Case 5】 CIF or not (8)

Part 2 Case study of international conventions on sales contracts

- (11)
- 【 Case 6】 A dispute arising from an oral contract (11)
- 【 Case 7】 Is the offer still valid after a counter-offer? (13)
- 【 Case 8】 Improper amendment to the initial offer (15)
- 【 Case 9】 Is the contract effective after the change of the packing
clause? (18)
- 【 Case 10】 Damage caused by serious quality defect (19)
- 【 Case 11】 Fraud by quality clause (21)
- 【 Case 12】 Compensation for discrepant packing (24)
- 【 Case 13】 The buyer refuses to take delivery because of shortage
..... (25)
- 【 Case 14】 Damage caused by improper packing (27)

Part 3 Case study of customs on international payments

- and settlements** (29)
- 【 Case 15】 Comprehension of the meaning of letter of credit (29)

【 Case 16】 Further interpretation of the meaning of letter of credit	(30)
【 Case 17】 Discrepancies in documents 1	(31)
【 Case 18】 Discrepancies in documents 2	(33)
【 Case 19】 Discrepancies in documents 3	(35)
【 Case 20】 Discrepancies in documents 4	(37)
【 Case 21】 Discrepancies in documents 5	(38)
【 Case 22】 Discrepancies in documents 6	(40)
【 Case 23】 Dispute on partial shipment	(41)
【 Case 24】 Is it a right decision?	(47)
【 Case 25】 The issuing bank refuses to make payment	(48)
【 Case 26】 Damage caused by early shipment	(50)
【 Case 27】 “Gum” or “Gum Rosin”?	(52)
【 Case 28】 A quantity clause with “about”	(54)
【 Case 29】 Trap clause 1	(55)
【 Case 30】 Trap clause 2	(57)
【 Case 31】 Whose faults?	(60)
【 Case 32】 Silence amounts to acceptance?	(63)
【 Case 33】 A promise made to be broken	(65)
【 Case 34】 Issuance of L/C, imported bill purchased and importer’s rating credit	(66)
【 Case 35】 Loss caused by misunderstanding of reimbursement	(72)
【 Case 36】 A delayed refusal of payment	(75)
【 Case 37】 A collusion between the applicant and the issuing bank	(77)
【 Case 38】 A shipping guarantee	(80)
【 Case 39】 L/C amendment 1	(82)
【 Case 40】 L/C amendment 2	(85)
【 Case 41】 Comprehension of confirming clauses under UCP 500 ...	(86)
【 Case 42】 A confirmed L/C	(88)

【 Case 43】 L/C documents 1	(90)
【 Case 44】 L/C documents 2	(92)
【 Case 45】 How to proceed with non-documentary terms and conditions?	(94)
【 Case 46】 Shipping guarantee, an act of tort?	(96)
【 Case 47】 The date of B/L disagrees with that of insurance policy	(98)
【 Case 48】 B/L without marking “Clean on Board”	(102)
【 Case 49】 The name of the carrier identified on the back of B/L	(107)
【 Case 50】 How does the carrier’s agent issue B/L?	(108)
【 Case 51】 Loss arising from deferred delivery of document	(109)
【 Case 52】 Is FCR a Transport document?	(112)
【 Case 53】 The effectiveness of issuing an insurance policy	(115)
【 Case 54】 No excessive amount of the draft/commercial invoice permitted by the credit	(116)
【 Case 55】 Missing address in documentary collection	(117)
【 Case 56】 Refusal of payment under D/P	(121)
【 Case 57】 Tactics for shipping guarantee by issuing banks	(124)
【 Case 58】 D/P changed into D/A	(126)
【 Case 59】 A dispute caused by D/A	(128)
【 Case 60】 Difference between D/P and remittance	(130)

Part 4 Case study of regulations on international cargo

transport	(133)
【 Case 61】 Hague time bar strictly applied	(133)
【 Case 62】 Ship owner liable for contaminated cargo	(136)
【 Case 63】 Don’t rely on class	(140)
【 Case 64】 About on-deck cargo damage	(142)
【 Case 65】 Exercising stoppage in transit	(147)
【 Case 66】 Ante-dated B/L resulting in large sum of compensation	

.....	(150)
【Case 67】 Trap by an Ante-dated B/L	(153)
【Case 68】 Seller's fraud by B/L	(155)
【Case 69】 Third party's fraud	(156)
【Case 70】 Risk by 1/3 Blank B/L	(157)
【Case 71】 Disputes arising from combined transport document	(160)
【Case 72】 Dishonor against Air way Bill without specifying "shipped"	(163)
第一部分 常用国际贸易术语案例解析	(166)
【案例1】 EXW 合同下火灾致损案.....	(166)
【案例2】 FOB 合同下买方违约延迟派船	(168)
【案例3】 CFR 合同与装船通知	(169)
【案例4】 CFR 合同下货物质量严重违约案	(170)
【案例5】 真假 CIF 合同	(171)
第二部分 货物销售合同公约案例解析	(173)
【案例6】 口头合同引起的争议案	(173)
【案例7】 发盘经还盘后是否有效	(174)
【案例8】 对原发盘修改处理不当	(176)
【案例9】 包装条款变更后合同是否成立	(178)
【案例10】 货物品质严重差错致损	(179)
【案例11】 利用品质条款行骗案	(180)
【案例12】 包装与合同不符致赔	(182)
【案例13】 数量短缺买方拒收	(183)
【案例14】 包装不当未引起重视受损	(184)
第三部分 国际支付与结算惯例案例解析	(186)
【案例15】 对信用证定义的理解	(186)
【案例16】 信用证定义解析	(187)
【案例17】 单据不符点案例1	(187)

【案例 18】 单据不符点案例 2	(189)
【案例 19】 单据不符点案例 3	(190)
【案例 20】 单据不符点案例 4	(192)
【案例 21】 单据不符点案例 5	(193)
【案例 22】 单据不符点案例 6	(194)
【案例 23】 分批装运纠纷案	(195)
【案例 24】 一个正确的决定	(199)
【案例 25】 开证行拒付案	(200)
【案例 26】 早交货致损案	(201)
【案例 27】 松香品名纠纷案	(203)
【案例 28】 一项“大约的”数量条款	(204)
【案例 29】 陷阱条款案例 1	(205)
【案例 30】 陷阱条款案例 2	(207)
【案例 31】 错在哪一方?	(208)
【案例 32】 默认即接受吗?	(210)
【案例 33】 脆弱的诺言	(212)
【案例 34】 信用证开立、进口押汇与进口商信誉	(213)
【案例 35】 对偿付理解错误致损案	(218)
【案例 36】 迟延的拒付	(220)
【案例 37】 申请人与开证行的共谋	(221)
【案例 38】 一份提货保函	(223)
【案例 39】 信用证修改案 1	(224)
【案例 40】 信用证修改案 2	(226)
【案例 41】 UCP500 有关保兑条款的理解	(227)
【案例 42】 一份保兑信用证	(228)
【案例 43】 信用证单据 1	(230)
【案例 44】 信用证单据 2	(232)
【案例 45】 非单据条款的处理	(233)
【案例 46】 银行提货担保书与侵权	(234)
【案例 47】 保险单与提单日期不符的纠纷案	(235)
【案例 48】 B/L 未加注 Clean on Board	(238)

【案例 49】 承运人名称注明在提单背面	(242)
【案例 50】 提单正面必须注明承运人名称	(243)
【案例 51】 因航班延误引起迟期交单致损案	(244)
【案例 52】 代理人货运收据 FCR 是运输单据吗?	(246)
【案例 53】 保险单据签署的有效性	(248)
【案例 54】 商业发票/汇票金额不应超过信用证可利用的金额	(249)
【案例 55】 托收单据漏填买方详址致损案	(250)
【案例 56】 D/P 遭拒付货物受损案	(252)
【案例 57】 开证行办理提货担保策略	(254)
【案例 58】 D/P 改 D/A 造成出口方损失案	(256)
【案例 59】 D/A 引起的纠纷案	(257)
【案例 60】 D/P 和汇款方式的区别	(259)
第四部分 国际货物运输规则案例解析	(261)
【案例 61】 严格运用《海牙规则》时效	(261)
【案例 62】 船东应对货物污染负责	(263)
【案例 63】 不要依赖船级社	(266)
【案例 64】 舱面货物受损问题	(268)
【案例 65】 对运输途中的货物行使停运权	(271)
【案例 66】 倒签提单造成巨额赔款	(273)
【案例 67】 倒签提单陷阱	(275)
【案例 68】 卖方利用提单诈骗	(276)
【案例 69】 第三方诈骗	(277)
【案例 70】 1/3 空白提单风险多多	(278)
【案例 71】 联合运输提单引起的争议	(280)
【案例 72】 航空运单无“Shipped”字样而遭拒付	(282)
参考书目	(284)

Part 1

Case study of international rules on trade terms commonly used

[Case 1] Damage caused by a fire accident in EXW contract

In April 1997, an export company in Shantou (hereafter called company B) signed a contract with an importer in Hong Kong (hereafter called company A) selling 3,000 dozens of nylon upper garments, US\$ 15/dozen EXW Shantou, packing in cartons, five dozens per carton, shipment before June 15, payment by T/T after company A's examining the goods.

On June 9, company B informed company A that the goods were ready for inspection. On June 10, accompanied by a member from company B, company A's representative went to the manufacturer in Shantou (hereafter called party C) for inspection. On June 11, all of the goods went through acceptance inspection and were packed and marked under the supervision of the representative, who then telexed company A that the goods had been inspected and accepted and company B would provide commercial invoice and other documents as soon as the payment was received. On June 12, company B received US\$ 45,000 remitted by company A and delivered the documents to the representative who wished to temporarily deposit the goods in party C's warehouse before he contacted some shipping agent in Shantou for container

chartering and export clearance. Company B communicated this to party C who said that the goods had been stored separately for delivery at any time. On the afternoon of June 13, company A's representative called to tell that the shipping agent would not be able to pick up the goods until the morning of June 14. In the wee hours of June 14, due to an unexpected explosion in the adjoining chemical plant, party C caught fire and all the premises and materials of party C were consumed. Hearing this, company A immediately demanded company B to refund the payment, claiming that damage of the goods should be borne by party B because they had not yet picked up the goods. Company B refused to refund the payment for the reason that fire was a kind of force majeure and that they had fulfilled the formality of delivering the goods. They held that the damage should be borne by company A. However, Company A thought that Company B still had the ownership of the goods because party C had not issued the certificate certifying that the goods had left the factory. Each side stuck to his argument. In the end, Company A accused Company B of not having fulfilled delivery duties. After hearing, the court made the following awards:

“1) Company B, the seller has delivered the goods to Company A, the buyer at the time and place stipulated in the contract, which is evidenced by the telex sent to company A by its representative.

2) According to the interpretation for EXW in INCOTERMS2000, the buyer should bear all risks of loss of or damage to the goods from the time the goods have been delivered at the factory. Moreover, the goods have been packed and marked under the buyer's supervision and deposited separately, all these actually prove that the goods have been placed at the disposal of the buyer.

3) The factory has not provided the certificate certifying that the goods had left the factory, but that is just a formality of internal management and not concerned with the transfer of ownership of the goods.

4) Company B is not liable for refund of the payment.

5) *Company A's damage and party C's fire accident have nothing to do with this case and are to be dealt with in a different case. "*

Analysis:

EXW is the trade term for manufacturer's delivery. Transactions under EXW terms are similar to domestic trade in the form, that is, the seller's risks, responsibilities and expenses are divided at the delivery point in the export country. So long as the seller has placed the goods of the right quality at the disposal of the buyer at the time and place stipulated in the contract, the obligation of delivery has been fulfilled and the risk is transferred to the buyer. These concepts have been stated in the current version of Incoterm EXW term as follows:

"Ex works" means that the seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i. e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.

Since the purchase price under EXW is relatively inexpensive, traders in Hong Kong and Macao always apply this term when doing business with the coastal area of the mainland. In this case, Company A has suffered loss because it has underestimated the buyer's risks under EXW. Here are several important lessons to be learned:

1) The buyer must get everything ready in advance and should not wait until the last minute. If the buyer in this case had made arrangements about shipping and customs clearance two days in advance, the damage caused by the fire could have been spared.

2) The seller and the factory should have issued the certificate certifying that the goods had left the factory immediately after Company A's representative inspected and accepted the goods. In that case, there would not have been any mistake for company A to exploit.

3) Under EXW term, the seller should make clear to the buyer that the ownership of the goods has been transferred so long as the buyer has checked