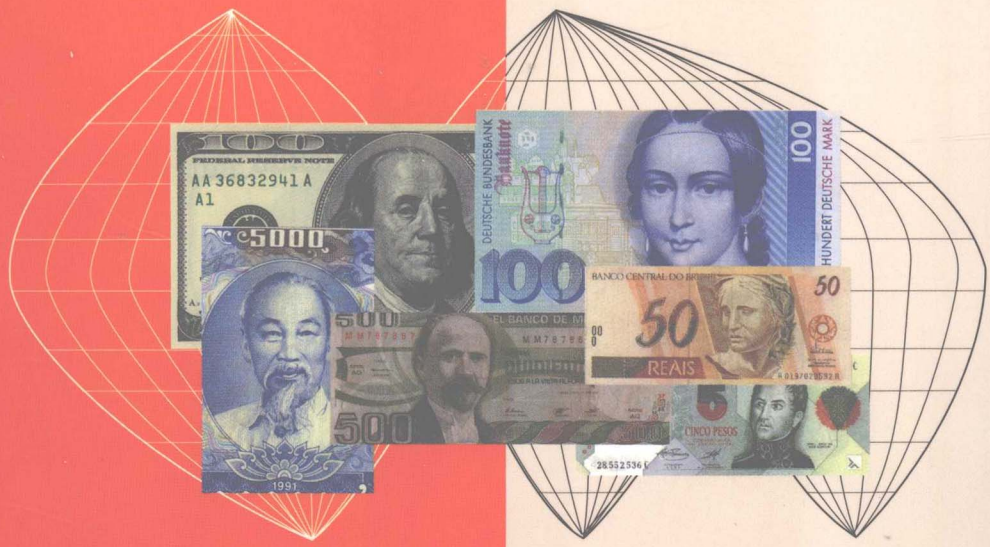
简明商务英语系列教程 ④

A SHORT COURSE IN

INTERNATIONAL CONTRACTS

国际商务合同

Drafting the International Sales Contract



KARLA C. SHIPPEY, JD

导读 张 平

2nd Edition

THE SHORT COURSE IN INTERNATIONAL TRADE SERIES

上海外语教育出版社

外教社 SHANGHAI FOREIGN LANGUAGE EDUCATION PRESS

简明商务英语系列教程 ④

The Short Course in International Trade Series

International Contracts

2nd Edition

国际商务合同

Drafting the International Sales Contract

Karla C. Shippey, JD

导读 张 平

上海外语教育出版社

外教社 SHANGHAI FOREIGN LANGUAGE EDUCATION PRESS

图书在版编目(CIP)数据

国际商务合同/(美)施佩(Shippey, Karla C.)著；张平导读.
—上海：上海外语教育出版社，2009
(简明商务英语系列教程)
ISBN 978-7-5446-1157-2

I. 国… II. ①施…②张… III. 国际贸易—贸易合同—英语
—高等学校—教材 IV.H31

中国版本图书馆 CIP 数据核字(2008)第 188191 号

WORLD TRADE PRESS®
Professional Books for International Trade

图字：09 – 2008 – 274

出版发行：上海外语教育出版社
(上海外国语大学内) 邮编：200083
电　　话：021-65425300(总机)
电子邮箱：bookinfo@sflep.com.cn
网　　址：http://www.sflep.com.cn http://www.sflep.com
责任编辑：杭　海

印　　刷：江苏句容市排印厂
经　　销：新华书店上海发行所
开　　本：787×1092 1/16 印张 12.25 字数 352千字
版　　次：2009 年 1月第 1版 2009 年 1月第 1次印刷
印　　数：5 000 册

书　　号：ISBN 978-7-5446-1157-2 / F · 0028
定　　价：28.00 元

专家委员会

出版前言

截至2008年，教育部已批准对外经济贸易大学、广东外语外贸大学和上海对外贸易学院三所高校设立商务英语本科专业。目前，全国已有近700所院校开设了商务英语专业方向或课程，商务英语教学内容由语言能力、跨文化交际、商科知识、人文素养四个课程群组成，如何建设和完善商务英语教材已成为办好商务英语专业的关键因素之一。

上海外语教育出版社经过精心策划，适时推出了商务英语知识群的教材——“简明商务英语系列教程”。这套原版商务英语专业知识阅读教材从美国世界贸易图书出版社最新引进，共12本，涉及商科知识的各个领域，包括国际经济学、国际贸易、管理学、营销学、国际商法、商务谈判、商业伦理、商业文化、商业合同、商业支付等。本系列教材的特点是：知识体系完整，内容简明扼要，语言文字流畅，理论联系实际。为了帮助读者更好地理解商务英语学习所必备的商务专业知识，本套教材组织了阵容强大的专家委员会，还特邀对外经济贸易大学商务英语的专家教授为本系列教材撰写导读，相信一定会对学习者大有裨益。

本系列教材可以作为大专院校商务英语、国际贸易、工商管理等专业学生的相关课程的教材，同时也可作为企业各类管理人员的培训教材或辅导资料，以及广大商务英语学习者的自学教程或阅读丛书。

“简明商务英语系列教程”专家委员会

2008.10

导　读

张　平

1　国际商务合同概述

在商务活动中，无论是商品贸易还是服务贸易，书面合同都是证明各方当事人达成协议的形式。合同的当事人为了各自不同的利益，在合同谈判时必须考虑到诸如价格、数量、质量、交货、运输、付款、保险、知识产权保护、合同的合法性以及如何解决合同纠纷等问题。

全球经济一体化使得国际贸易快速发展，跨国商务活动日益增多。在国际商务活动中，国际商务合同也是合同当事人达成协议不可缺少的法律文件。因合同当事人来自不同国家和地区，文化背景不同，各国适用的法律不同，使得合同的谈判、订立和执行更加复杂。书面合同在国际贸易中起到非常重要的作用，合同当事人也意识到签订书面合同的益处，这已成为国际贸易的趋势。

国际商务合同不仅受到当事人所在国家或地区法律的影响，还受到国际法以及地区自由贸易协定的约束，因此国际商务合同除了涉及上述内容外，合同当事人还需考虑通关、交易风险的划分、争议解决的法律适用等问题，各方当事人应采取审慎的态度草拟国际商务合同条款，将各自的权利和义务清楚、详尽地写进合同条款中，以使合同顺利地执行，同时避免不必要的纠纷，起到未雨绸缪的作用。

2　本书特色

1）作者简介

本书作者卡拉·施佩（Karla C. Shippey）是美国加利福尼亚州卡拉施佩（Karla Shippey）律师事务所的执业律师，主要负责跨国公司商业交易和知识产权保护方面的业务。因此作者是从法律专业的角度阐述国际商务合同的方方面面，同时本书也体现了美国人在交易中重视书面合同的传统。

2) 本书特色

本书作者在写作时力求避免使用法律术语，为读者提供了起草国际商务合同方面的知识，同时使读者了解不同文化传统和法律对签订、解释和执行国际商务合同的影响。为此，作者列举了大量实例来说明不同地区贸易习惯做法对国际贸易产生的影响，解释了不同法律体系对合同的不同看法，并提供常用法律词汇表，方便读者查阅。

本书还为读者提供了不同种类的合同范本，供读者参考。作者给出了合同条款内容，同时指出拟定该条款的目的，解释条款内容的含义，以避免合同纠纷。

3) 使用对象及方法

本书内容实际操作性较强，适用于从事国际贸易、银行业务的人士和法律从业人员，也可作为高等院校商务英语方向和国际贸易、国际经济、国际工商管理等商科学生专业课辅助阅读资料。

3 本书主要内容

作者从国际贸易以及法律专业的角度，介绍了3个方面的内容：1)在草拟国际商务合同前，合同当事人应做的准备工作和应考虑的问题；2)草拟合同条款时，合同应涉及的内容以及如何用恰当的语言表达当事人的要求；3)合同的审核。具体内容如下：

第一章 合同在国际商务活动中的作用

在国际贸易中，各方当事人的利益趋向不同，社会价值观、法律观念也不同，合同起到了平衡当事人地位的作用。合同规定各方当事人的权利、义务、适用的法律，提供违约的补救方法。

第二章 影响国际商务合同的问题

首先，文化差异会影响各方的磋商，进而影响当事人在对方国家所从事的商务活动。其次，全球一体化(例如关贸总协定和《联合国国际货物销售合同公约》在国际贸易中的广泛适用、地区性自由贸易协定的出现等)给国际商务合同的签订带来影响。另外，政治因素、对方国家现存的法律法规以及电子商务也是在签订合同时不能忽略的问题。

第三章 交易各方注意事项(一)

介绍商务交易当事人即买卖各方应作的准备。买卖双方应在了解市场供求关系的基础上明确自己在交易中的地位，并应对合同的另一方进行资信调查以

确保自己在交易中的利益得以实现。在核算利润时，买卖双方要将诸如运输、通关、保险等交易的隐性成本扣除。在谈判前、交易中以及合同签署前，买卖双方应就本国和对方国家的贸易法规等问题咨询律师，以保证自己合同项下的权益。

第四章　如何起草国际货物销售合同

作者给出了合同范本，合同条款包括货物的描述、价格和担保条款，还包括付款、装运、保险、仲裁等重要交易条件；并逐条作出注释，告诉读者起草各项条款的注意事项。

第五章　国际贸易术语

介绍国际贸易中的常用术语，其中重点介绍了巴黎国际商会制订的《2000年国际贸易术语解释通则》。

第六章　签订国际货物销售合同应注意的问题

指出签订此类合同的要点，例如进出口商应考虑进出口的产品是否符合市场需求和有关国家的法规要求，做好进出口成本核算。起草合同时，需对支付方式、货币以及汇率等与国际支付有关的问题作出明确规定。知识产权保护、违约的补救、解决纠纷所适用的法律也是合同的重要内容。本章还简要介绍了一些国家的进出口贸易限制规定。

第七章　交易各方注意事项（二）

指出交易各方起草合同时应澄清的问题：了解对方的是否有签订合同的权力；确保产品规格的描述准确无误；在合同中界定遭遇不可抗力时所承担的风险；用准确完整的语言表达合同内容；做到在签字前正确地理解合同内容；按合同行事等。合同当事人也可寻求律师的帮助。

第八章　用准确的语言起草合同条款

通过分析具体合同条款内容，指出造成误解、产生争议的语言表达，之后对这些条款进行修改，给出语言表达准确的合同条款。作者认为，当事人应站在对方的立场上审核合同，找出自己的弱点，修正歧义条款内容，使得合同切实可行。

第九章　交易各方注意事项（三）

在签合同前，审核合同是非常重要的，作者在第九章中介绍了买卖双方应审核的重点及注意事项。首先，各方要考虑签订合同只是为了完成一次交易还是要与对方建立长期合作关系，因为交易目的不同会导致合同的内容和基调有差别。其次，确认对方是否有权签订合同。然后，当事人要审核合同是否已包括商品规格、价格、交货、付款、通关、运输、质量保证及售后服务、合同转让及终止、违约补救等重要条款。对每一条款应重点审核的问题，作

者都一一作出详细解释。为了确保买卖双方明确各自的合同权利和义务，作者建议请律师帮助审核合同。

第十章 合同的效力

商务合同所起的作用因各国文化习俗的差异而不同：在有些国家，商人会一丝不苟地履行合同义务；而在有些国家和地区，人们更重视人际关系，合同的作用是第二位的，合同的履行就不那么严格。因此，国际商务合同谈判和达成交易所花的时间长短不一，交易条件也会有差异。本章还介绍解决国际商务合同争议的途径：调解、仲裁和诉讼，以及各种争议解决途径的优缺点和程序。

第十一章 合同背后的法律体系

介绍了英美法、大陆法、伊斯兰法等法系的特点，以及仲裁、合同在各大法系中的作用。这里值得注意的是，作者在介绍社会主义法时，所持观点有些偏颇。随着各国经济的快速发展、全球经济一体化的进程加快，社会主义国家法律体制逐步健全，这些国家的商业法律环境正日趋完善。

从第十二章到第二十一章，作者提供了国际商务合同范本，供读者参考，包括商品销售合同和订购合同、咨询协议、销售代理合同、特许协议等。作者还对合同条款作了注释，说明起草合同时应包括的内容和注意事项。

4 推荐参考书

1) Daigneault, Edward W. *Drafting International Agreements in Legal English.* LPE, 2005.
2) Felemegas, John. *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law.* Cambridge University Press, 2007.
3) Flechtner, Harry M., Ronald A. Brand and Mark S. Walter. *Drafting Contracts Under the CISG.* Oxford University Press, 2007.
4) Fontaine, Marcel and Filip De Ly. *Drafting International Contracts: An Analysis of Contract Clauses.* Transnational Publishers, 2006.
5) Kouladis, Nicholas. *Principles of Law Relating to International Trade.* Springer Publishing, 2006.
6) Ribeiro, Robert. *Commercial Contracts: Drafting Techniques and Precedents.* 3rd ed. Thorogood Publishing, 2005.
7) Schaffer, Richard, Beverley Earle and Filiberto Agusti. *International Business Law and Its Environment.* 6th ed. Thomson, 2005.
8) 薛波，《元照英美法词典》，北京，法律出版社，2003 年。

INTRODUCTION

A SHORT COURSE IN INTERNATIONAL CONTRACTS is intended to give you an understanding of commercial agreements between parties trading across country borders. For the most part, you will face the same issues in negotiating domestic contracts as you will when you make agreements with traders in other countries. For example, parties to any commercial contract, whether domestic or international, must consider quality control, compliance with government regulations, protection of intellectual property rights, and dispute resolution. The international aspect of the contract adds a level of complexity to negotiations, performance, and enforcement because the parties are distant, have diverse cultural backgrounds, and are subject to the laws of different countries.

THE LAWYER'S POINT OF VIEW

International contracts must be understood within the context of the legal profession. If you should be so unlucky as to be in a crowd of practitioners of the legal profession, there are two words that you will hear spoken over and over again. Without a doubt, it is those two words that have led to the development of the complex language known to the general public as "legalese." No matter what the culture, regardless of the country, legal professionals from around the world live by this two-word creed. Ask them a question, and their eyes will take on a thoughtful gaze, their brow will furrow intently, and they will declare, "It depends" (or the equivalent in their own tongue).

Legal practitioners are trained to consider all options, and therefore they strive to state explicitly every possibility, leaving no room for argument or doubt. For example, if a sales contract requires a buyer to inform a seller that the goods being purchased must meet certain specifications, a question may arise as to the meaning of the word "inform." An attorney for the buyer might say, "it depends." In this case, the seller should have known that the buyer had particular specifications because the seller previously filled five orders for the buyer for the same goods. Then an attorney for the seller might say, "it depends." In this case, the buyer should have given written instructions because the buyer wrote the specifications on the previous five order forms. Thus, the attorneys might turn the simple phrase "the buyer must inform the seller of any particular specifications for the goods" into legalese: "the buyer, regardless of whether he or she has previously ordered any of the seller's goods to conform with any specifications whatsoever, shall inform, whether in writing, orally, or otherwise, the seller of any and all specifications with which the buyer demands conformance of the goods that are the subject of this contract."

SIMPLE VS. COMPLEX CROSS-BORDER TRANSACTIONS

The author of this book has made every effort to avoid "legalese" and to recognize the extent to which different customs and laws will affect the creation, interpretation, and enforcement of cross-border contracts. To this end, the author has provided examples throughout the text to illustrate the effects of various regional business practices, a special section to explain how contracts are viewed in

different legal systems, and a glossary to define the technical legal meaning of common legal terms.

Nevertheless, you are forewarned that the author starts from a biased platform: she is a lawyer, and an American one at that. For this reason, the author must admit to a strong belief in the "contract-happy" American tradition that every commercial relationship is best defined in a written contract because, while the contracting parties offer each other mutual benefits, they also have at least potentially adverse interests in securing the best deal. Written contracts take on added significance when parties from different cultures and countries have different expectations and customs and are subject to contrary laws. Increasingly, parties who are trading internationally have begun to recognize the advantages of entering into written contracts. There is a distinct trend among parties to cross-border transactions to operate on something more than a handshake.

In answer to the question of how simple an international commercial contract may be, the author is compelled to answer in the tradition of her chosen profession, "it depends." On the one hand, any contract can be written in plain terms. On the other hand, the complexity of the relationship, rights, and obligations of the parties should be reflected in the length and intricacy of the contract provisions. When parties first meet and agree, they usually prefer not to think of what might go wrong and a simple contract is enticing. But if something does go wrong, parties who have fully set out their rights and obligations will be prepared for, if not protected against, the failure to complete the contract terms. While the author has presented "plain term" contract provisions, she has also included cautionary notes to alert you to the potential pitfalls in an effort to develop your awareness of whether a contract term states your intent. You should keep in mind that, while contract provisions should be as clear and definite as possible, when it becomes necessary to interpret the meaning of a contract provision — well, yes once again — *it depends* on the interpreter.

SAMPLE CONTRACTS

Finally, a few comments must be made about the sample contracts included in this book. You may find these forms quite useful in your own transactions. However, you will most certainly need to change the provisions to fit your own special situation. The author has dealt with the common issues and has tried to bring to your attention the problems that frequently arise because of imprecise or missing contract terms. Always be careful that your contract covers the rights and risks of your particular transaction, and seek the assistance of a lawyer to draft or review the contract in light of your specific circumstances. If you decide to use any of the forms, you should be certain to note the conventions used to indicate alternative phrasing in the forms. The conventions are not part of the forms. Alternative phrasing is shown in brackets, and inside the brackets, by parentheses. The brackets contain both instructions (in italics) and actual text (in roman). A slash between words that are enclosed in brackets indicates that you must select one of the words, again, depending on your specific situation.

Karla C. Shippey, J.D.
Orange, California

TABLE OF CONTENTS

CHAPTER 1

The Role of Contracts in International Commerce

CONTRACTS ARE SO MUCH a part of living in a society that you are probably unaware of how many contracts you make every day. In the broadest sense, a *contract* is simply an agreement that defines a relationship between one or more parties. Two people exchanging wedding vows enter into a contract of marriage; a person who has a child contracts to nurture and support that child; shoppers selecting food in a market contract to purchase the goods for a stated amount. A *commercial contract*, in simplest terms, is merely an agreement made by two or more parties for the purpose of transacting business.

Any contract may be oral or written. Written terms may be recorded in a simple memorandum, certificate, or receipt. Because a contractual relationship is made between two or more parties who have potentially adverse interests, the contract terms are usually supplemented and restricted by laws that serve to protect the parties and to define specific relationships between them in the event that provisions are indefinite, ambiguous, or even missing.

When one party enters into a commercial contract with an unfamiliar and distant party across a country border, a contract takes on added significance. The creation of an international contract is a more complex process than the formation of a contract between parties from the same country and culture. In a cross-border transaction, the parties usually do not meet face-to-face, they have different societal values and practices, and the laws to which they are subject are imposed by different governments with distinct legal systems. These factors can easily lead to misunderstandings, and therefore the contracting parties should define their mutual understanding in contractual, and preferably written, terms. The role of a contract in an international commercial transaction is of particular importance with respect to the following aspects.

Balance of Power

The essence of a contract is the mutual understanding reached by two parties who hold adverse positions against each other. In most contractual situations, one party will have a stronger position than the other. For example, a large corporation that offers goods for sale may be able to insist on contract terms that are highly favorable to the corporation while restricting the rights of individual buyers. The corporation may offer a standard form sales contract with nonnegotiable terms — take it or leave it — to the buyer.

THE PARTY WHO DRAFTS THE CONTRACT

The balance of power between contracting parties usually tips in favor of the party who drafts the written contract. Even if the essential contract terms have already been negotiated and agreed by both parties, the drafting party will typically include provisions that are more skewed to his or her favor. To illustrate, a seller who drafts a sales contract may provide trade terms by which the risk of loss passes to the buyer at the first possible moment of the transfer.

THE PARTY FAMILIAR WITH WRITTEN CONTRACTS

In cross-border transactions, the balance of power may tip toward the party who is most familiar with written contracts and whose country has a more highly developed system of contract enforcement. This party may insist on terms that are common in his or her domestic contracts, and the other party, with less or no understanding of those terms, may simply acquiesce. As an example, a clause that is commonly inserted into contracts in the United States is, "Time is of the essence." If such a clause is included, failure to perform the contract within the time allowed is considered a material breach of the contract, entitling the other party to claim damages or other remedies. In cultures that place more emphasis on continuing business relationships, this clause has little meaning because contract terms are commonly renegotiated to allow for a party's difficulties in performing the contract — the ongoing relationship is more important than the one-time deal.

ENFORCEMENT OF ONE-SIDED CONTRACTS

In the context of enforcement, the balance of power can work against the stronger party in a contract negotiation. Courts and arbitrators often refuse to enforce terms that unreasonably burden one party or that are otherwise unconscionable. Furthermore, contract provisions are typically given a strict interpretation against the party who drafted the terms, since that party had the opportunity to draft a clear and definite contract.

TIP: Because of the problem with enforcement, parties to cross-border transactions should avoid taking unfair advantage. A contract that is in accord with fair business practices will encourage both parties to perform their obligations, and therefore the need for enforcement — and the need to outlay the costs attendant to enforcement — may be avoided.

Cross-Border Rights and Obligations

In any contractual arrangement, it is important to establish clearly the rights and obligations of each party. If these terms are absent or ambiguous, the parties will probably not be able to perform the contract without first modifying the terms. Moreover, enforcement will be unpredictable, because a court will have to imply terms based on what the court believes would have been the intent of the parties.

DIFFERENCES IN BUSINESS PRACTICES

For contracts made between parties within the same country, missing or indefinite terms may be filled in by local laws or practices. The rationale is that the parties likely intended to follow the local laws and practices with which they were familiar.

If the parties are from different countries, their intentions cannot be so easily implied because they herald from different legal systems and no doubt utilize dissimilar business practices. For this reason, it is essential for your international contract to spell out in definite terms the rights and obligations of each party.

INTERNATIONAL LAWS

In recognition of the difficulties that parties face in contracting across country boundaries, the international community has begun to adopt systems of laws and rules to be applied instead of local laws in transactions between parties located in different countries. The intent behind adopting uniform, international laws is to ensure that all parties to a cross-border transaction are subject to the same set of rules, regardless of whether the laws of their home countries are dissimilar. If parties to an international sales contract are nationals of countries that have acceded to an international treaty or pact, such as the United Nations Convention on the International Sale of Goods (CISG), they may rely on international law to determine at least some of their rights and obligations.

In general, it is unwise to rely on the law, even international law, for implied contractual terms. The application of international laws to the interpretation of a contract can lead to unexpected and even unfavorable results. Thus, if an international contract of sale fails to provide a delivery time and the buyer sues for breach when the seller fails to deliver within one month, the contract may be deemed invalid under the local law of the buyer's country because of the absence of an essential term. But if a court applies international law, it may imply a reasonable delivery time of two months in accordance with the practice of the industry and therefore may enforce the contract.

PRECISENESS AND PREDICTABILITY

To avoid an unfavorable and uncertain result, it is best to define your rights and obligations in a written contract when you are dealing across country borders. Hopefully your contract terms will be sufficiently explicit that both parties will understand what they are supposed to do and what they are entitled to receive. In the event of a breach, there is a greater chance that a court will enforce explicit terms (unless the provisions are unconscionable), and thus the parties can more closely predict the outcome.

Cross-Cultural Expectations

Well-drafted contracts can help to ensure that parties who have diverse cultural backgrounds reach a mutual understanding with regard to their rights and obligations. All contracting parties come to the table with individual expectations, which in turn tint their understanding of the terms. What is reasonable to one may not be to the other, in which case mutual understanding — an essential element in the creation of an enforceable contract — is lacking.

The key is in the drafting of the agreement. You should write the provisions to reflect the culture of the foreign party, while at the same time keeping in mind your own requirements. Such drafting requires that you have an understanding of the other party's culture and the extent to which it differs from your own. Your contract

provisions may need to be simplified so that they can be clearly understood, particularly if the contract will have to be translated into the other party's own language. You should review the provisions for shorthand phrases, legalese, and slang familiar to you but not to the other party — these provisions should be written in plain terms to ensure mutual understanding.

Further, you will need to determine the extent to which the other party is familiar with international business. If the other party has been trading internationally for some time, he or she is more likely to have gained an understanding of cross-cultural transactions. During your negotiations, you should explore the business history of the other party so that you can draft your contract to the appropriate level of sophistication.

A contract that reflects the cultural expectations of each party is more likely to be performed to the satisfaction of both. Mutual understanding means not only that each party knows its rights and obligations before signing the contract, but that the parties are in complete agreement as to each other's rights and obligations. Disputes typically arise when one party interprets a right or obligation differently than the other party. A contract drafted to ensure mutual understanding of culturally diverse parties will help to avoid, or at least to settle, subsequent disagreements over performance.

10 TIPS TO CULTURAL SUCCESS

- Follow your host's lead
- Practice fundamental politeness and business courtesies
- Listen attentively and with interest
- Keep hand motions and body movements to a minimum
- Speak firmly, with conviction, and in a warm tone that invites the other party's comments; avoid boisterous talk and slang
- Personally sign all correspondence
- Respond promptly to inquiries and orders
- Ask what language is spoken and arrange for a translator if necessary
- Avoid generalities and preconceived expectations
- Laugh at yourself, and be serious when it counts

See *A Short Course in International Business Culture*, also by World Trade Press.

Personal Commitment

When dealing with a distant party in another country, you may be uncertain of the extent to which that party is making a commitment to perform the contract. While you are no doubt serious about the bargain, you have no evidence as to whether the other party has equal resolve. Does timely delivery of

your order have the same importance to the other party as it does to you? Is the other party committed to producing quality products that meet or even exceed your expectations? Trust is built on the personal commitment that each party demonstrates to the transaction, and therefore this aspect of any transaction whether domestic or international is especially significant.

Gaining evidence of commitment in cross-border transactions, in which parties usually operate by different business practices, can be more difficult than in domestic transactions, in which parties typically share the same business practices. A party who orally agrees to become obligated has made a commitment to the other party, but the terms of that commitment depend exclusively on the word of one party against the other. In many cultures, bargains are struck only when the parties meet personally; a handshake seals the promise. Other cultures insist on the signing of written informal or formal contracts before a final commitment is made.

In transacting business with a person of another culture, you should keep in mind the way in which they are likely to show their commitment. You will need to decide in advance of negotiating the bargain whether to accept the other party's evidence of commitment, insist on your own, or reach a compromise. If you meet the other party personally, shake hands, and gain that parties respect and trust, you may decide that an oral agreement is sufficient to express commitment to the transaction.

If you do not feel comfortable with an oral arrangement, consider the other party's culture before you act. The other party may be from a culture where contracts are usually in writing, and thus without much fuss, you may simply mention that you will put the contract in writing and send it for signing. On the other hand, the other party's common practice may be to operate on a handshake, and that party may be insulted if you insist on a written contract. In that event, you may have to find an indirect approach. For example, you might tactfully explain the custom of your country, and ask the custom of your host's country. Then, if your host seems open to the idea, you might suggest an informal letter or memorandum as a compromise. If not, you may take or leave the handshake bargain, depending on whether you want the business and whether you can afford the risk.

If you have previously done business with the other party, you might well be willing to accept a handshake to seal the bargain, but such practice should be the exception not the rule. When dealing internationally, it is always best to insist on written evidence of personal commitment, even if you simply exchange a memorandum. In relative terms, there is more cost — in time and money — involved in cross-border transactions than in domestic ones. When you agree to sell or buy goods internationally, you are also responsible for complying with import, export, customs, consumer product, marking, transport, and other trade-regulating laws of two or more countries. It is wise to ensure that the other party shares the same commitment.

Governing Law

When trading internationally, parties frequently assume that they can operate in accordance with their own domestic laws and practices. This assumption is erroneous and can lead to grave misunderstandings. When you trade across country borders, you are subject to not only the laws of your own country but to the laws of other countries where you do business. You need not physically