西南财经大学“211工程建设项目”图书

[英汉对照]

案释

国际贸易惯例

帅建林 王红雨 编著

ANNOTATION BY CASES TO INTERNATIONAL TRADE CUSTOMS AND PRACTICES

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内容提要

该英汉对照版本《案释国际贸易惯例》旨在让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应用能力。

国际贸易惯例指国际贸易中的系列操作规范和管理条例，它们虽然不具有法律上的直接强制力和约束力，但是在国际贸易实践中已经成为国际公则，其效力相当于法律。因此，国际仲裁机构和各国法院往往根据这些惯例解决贸易纠纷。本书以英汉对照案例分析方式，系统解析了《2000 年国际贸易术语解释通则》（Incoterms 2000）、《联合国国际货物销售合同公约》（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》以及 WTO 有关规则的疑难点。案例及案例分析涉及国际货物贸易的各个环节：合同磋商、货物包装、货物运输、货物保险、国际结算等基本环节。英汉对照案例故事性强，文字生动活泼，表达方式地道纯正，可读性及趣味性兼而有之。

本书既适合于高校经贸专业的师生，也适合外向型企业、银行的操作人员以及法律、政府等部门的研究人员和管理人员。

前　言

中国加入 WTO 之后，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就成为一大课题。为了适应这种需要，很多大专院校的经贸专业都开设了双语课程，或是外语专业开设经贸课程。作为经贸方向的主干课程之一，国际贸易实务的教学也经历了革新，使用英语编写的教材，使用英语进行课堂教学。美中不足的是，在教授这门实践性很强的课程时，缺乏相应的系统案例与之搭配。虽然教师在课堂上会不时引用一些案例，但大多比较零散，讲过之后学生容易遗忘。现有的案例汇编基本上全是中文的，不便直接在双语教学中使用，而现成的英文案例又多是英美人所撰，且很大程度上与中国国情不符。事实证明确有必要出炉适合中国具体情况的英文版国际贸易案例集，编写本书的初衷正是为了填补这一空白。

本书有如下几个特点：

1. 与现有的国际贸易惯例和规则紧密结合。国际贸易实践中没有统一的强制性法律，规范各国贸易行为的只有这些经国际组织加以编纂与解释的习惯做法。可以说只有真正理解和掌握了这些国际贸易惯例和规则，才能在实际业务操作中占据主动。本书以案例来阐释相关贸易惯例和规则，并依据相应的条款对案例进行具体分析，使读者能更好地理解和掌握并进而学会运用这些国际贸易惯例和规则。

2. 紧扣国际贸易业务程序。本书的编排除了遵照有关国际贸易惯例和规则的先后次序外，还尽量照顾到实务程序。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、保险及货款结算的各个环节，从而使本书具备相当的系统性和实用性。

3. 英汉对照。本书的第一至第五部分均采用英汉对照的方式编排。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，以便提高读者的语言技能；对应的汉语部分对于英文程度不太高的读者可起到辅助理解的作用；第六部分则供英文程度较高的读者研读，照顾了不同层次的需要。

本书适用于MBA学员、大专院校经贸专业学生、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，恳请同行专家与读者不吝指正。编者电子邮箱：shuai@swufe.eud.cn。

编　者

2005年9月

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Part 1

Annotation by Cases to INCOTERMS 2000

1. CIF

COST, INSURANCE AND FREIGHT(...named port of destination)

"Cost, Insurance and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

9.3 In particular, the seller should not-and indeed could not, without changing the very nature of the "C"-terms-undertake any obligations with respect to the arrival of the goods at designation, since the risk of any delay during the carriage is borne by the buyer.

[Case 1] *CIF or Not?*

An import and export company H in China signed with a British company D a contract on CIF basis, whereby company H exported some light industrial products to company D. There were two special clauses in the contract: (1) "The goods must be shipped to a port in Britain from Shanghai in October 1996; the relevant L/C opened

by company D should reach company H by the end of August; company H must guarantee that the loaded vessel arrive at the destination not later than December 1; (2) Should the loaded vessel arrive at the port of destination later than December 1, company D is entitled to cancel the contract. If the payment has been made at the time, it must be returned to company D exactly the amount." After that, in the course of clearing up contract files, a controversy arose in company H about the nature of the CIF contract. Some people held the opinion that the contract was on CIF basis in spite of the two particular terms, giving following reasons: Firstly, the contract was signed under the trade term of CIF, which indicated the nature of the contract; secondly, company D made such special requirements only to protect their benefits; thirdly, the contract provided payment by L/C, which was in accordance with CIF term's characteristic of payment against documents. Others believe that according INCOTERMS 2000, the seller's delivery obligations are fulfilled as long as the seller has completed shipment of goods at the appointed point and handed over to the buyer documents stipulated in the contract. The seller is not required to guarantee the arrival of goods at the destination. However, this contract was a false CIF contract, as it changed the nature of CIF term by taking physical delivery as a condition of fulfillment. The contract must be renegotiated. Finally, company H reached a common perception and got the two special clauses amended through negotiation with company D. The contract was carried out smoothly.

Analysis:

Although the contract was concluded on CIF basis, it was not a genuine CIF contract. This case indicates the significance of CIF term's sphere of application. The two special clauses in the original contract not only contradicted with the nature of CIF term, but disagreed with the practices of international justice and arbitration.

First, the original contract not only set a limit to the date of arrival, but also stipulated that the buyer was entitled to cancel the contract or demand back the payment that had already been made. Evidently, the restrictive date of arrival served not as the date of payment, but as a condition of payment. Therefore, legally the contract was not a genuine CIF contract as it made physical delivery a condition of payment.

Second, under CIF terms, the risk of loss of or damage to the goods passes from the seller to the buyer when the goods have passed the ship's rail at the port of shipment. A contract that expands the seller's risk from the port of shipment to the port of destination is not a CIF contract. According to the provision in the original contract,

company H was obligated to refund the payment in case of natural calamities or accidents during the course of delivering the goods, which evidenced that the seller assumed all the risks during the transport.

Third, under CIF terms, the buyer must make payment against documents rather than against the arrival of the goods at the port of destination, provided that the seller has fulfilled his delivery obligations and presented the required documents. According to the original contract, whether company H could receive the payment for goods or not depended on buyer's receiving on schedule. Although the seller might receive the payment by means of L/C, the payment would be taken back by the buyer if the goods could not duly arrive at the port of destination. Besides, company D could take advantage of relevant L/C clauses which are in accordance with those in the contract to deny the seller being paid for goods. Company H could hardly make a claim for his rights under a normal CIF contract since this contract was the one "in name but not in reality".

2. CFR

COST AND FREIGHT (... named port of destination)

"Cost and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

A7. Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

【Case 2】 ***CFR & Shipping Notice***

An import and export company in China signed an export contract with an im-

porter in Marseilles, France on drawnwork tablecloth with an amount of USD80 000, payment by D/P at sight.

On the morning of January 8, 1997, the goods were all loaded onto the named vessel. The export salesperson who was in charge of this contract got so busy that he didn't remember to send the buyer the shipping advice until the next morning. Unexpectedly, when the French importer went to the local insurance company to insure the goods, the latter had already learned that the ship suffered a wreck on January 9 and refused to underwrite. The French importer immediately sent a telex saying "Owing to your delayed shipping advice, we are unable to insure the goods. Since the vessel has been destroyed in a wreck, the loss of goods should be for your account. At the same time, you should compensate our profit and expense losses which amount to USD 8 000." Soon all the shipping documents sent through the collecting bank were returned to the export company, for the reasons that the importer refused to take up the documents. Being a regular client of the exporter's, the French importer did not insist on claim for compensation after the exporter explained his difficult situation and apologized for the whole thing. However, the exporter should learn his lesson from this experience.

Analysis:

1. Under CFR terms, all the risks, duties and expenses after goods' passing ship's rail are normally borne by the buyer. However, Incoterms 2000 provides that "the seller must give the buyer sufficient notice.....". Here the word "sufficient" refers to both "sufficient" content and "sufficient" time. The latter means the seller must give the shipping notice in a timely manner so as to allow sufficient time for the buyer to effect insurance of the goods. The later the seller sends the shipping notice, the less sufficient time the buyer has to insure the goods. In this case, it was the buyer's failure to send the "sufficient notice" that led to his loss of both goods and money. On the other hand, if the seller had informed the buyer immediately after shipping the goods, the buyer would have insured the goods in time at the local insurance company. In that case, the insurance company would have assumed its liability for compensation even if the accident had happened prior to the buyer's effecting insurance while both the buyer and the insurance company were ignorant of the accident. Thus it can be seen how important it is to send the shipping advice to the buyer in time under CFR terms. That is why shipping advice is often referred to as "insurance notice" in trade practices.

2. When CFR terms or FOB terms are used in combination with payment by collection, the seller may cover the goods against "seller's interest risk" before exporting the goods to counteract the buyer's failure to effect insurance or the buyer's refusal to retire the documents. Had the seller in this case covered the shipment against the said risk, the loss would have been somewhat mitigated.

【Case 3】 *CFR & Goods Quality*

A French company imported a batch of wheat on CFR basis. The contract provided that the landing quality of the goods should be taken as final. However, when the goods arrived at the destination, the import quarantine bureau detained the goods as they found that the goods contained a great deal of bacterium which were forbidden to enter the country. Unfortunately, the goods were consumed by a fire while in detainment. A dispute broke out between the buyer and the seller.

Analysis:

Under CFR terms, the buyer should bear all the risks after the goods have passed the ship's rail and been loaded on board. But should the seller be held responsible for any default before that point?

In this case, it was the buyer who should assume the risks. The reason is that although this was a CFR contract, the seller breached it by delivering the goods which failed to meet the quality standard provided in the contract. It was this fundamental default that has caused the detainment and then the loss of the goods. Therefore, while the risks had been transferred to the buyer, the seller's default returned the risks to the seller.

Of course, under CFR contract, when the seller's default is not fundamental, the buyer should bear all the risks for any loss of the goods at the port of destination. Meanwhile, the seller should make due compensation to the buyer as per the contract and relevant laws.

3. FOB

FREE ON BOARD (... named port of shipment)

"Free on Board" means that the seller delivers when the goods pass the

ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term could be used.

B3 a) The buyer must contract at his own expense for the carriage of the goods from the named port of shipment.

B7 Notice to the seller

The buyer must give the seller sufficient notice of the vessel name, loading point and required delivery time.

【Case 4】 ***The buyer delays to send the vessel under FOB.***

Company A in China signed a contract on FOB basis to export wheat to Company B in Africa. It was contracted that shipment to be made in four lots. The shipping clause ran as follows: "The vessel nominated by the buyer should reach the port of shipment within eight days before the date of shipment. Otherwise, any of the seller's loss or damage thus incurred shall be borne by the buyer." The contract also specified that "The buyer must give the seller a notice of vessel name and the estimated date of arrival by telecommunication five days before the vessel arrive at the port of shipment." During the course of fulfillment, the first three lots were effected smoothly according to the contract. However, the buyer was slow to send the vessel for the last shipment. In reply to Company A's repeated urges, company B said that they were unable to book shipping space because of shipping company's busy schedule and asked for postponing delivery for two months. Company A replied as follows: "According to the contract, you are bound to send the vessel. In case of any difficulties in this aspect, we may allow you to delay the shipment on condition that you make a compensation which amounts to USD200 000." Finally the bargain of compensation was settled at USD150000 and company B was allowed to delay vessel sending for two months.

Analysis:

Under FOB terms, it is the buyer's obligation to make arrangements for delivering the goods. According to INCOTERMS 2000, "The buyer must contract at his own expense for the carriage of the goods from the named port of shipment." It also

provides that "The buyer must give the seller sufficient notice of the vessel name, loading point and required delivery time". If the buyer's vessel fails to arrive at the port of shipment duly, or fails to accept the goods, or stop loading ahead of the schedule specified in the contract, all the risks and loss of and damage to the goods are to be borne by the buyer as of the appointed date for delivering the goods or the expiry date of the time limit.

It was learned later that during the implementation of the last shipment, the international market price of wheat dropped drastically, which greatly influenced the sales of company B who attempted to cancel the delivery of the last shipment by hanging it up. However, company A made good use of INCOTERMS explanation for FOB terms and protected its own interests through proper means.

4. EXW

EX WORKS (... named place)

"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.

【Case 5】 *Damage caused by a fire accident*

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 3000 dozens of nylon upper garments. The contract stipulated: USD15/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 USD45000 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 renting containers 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 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 explanation to 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 inner 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:

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 will be transferred to the buyer. 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 from 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 had inspected and accepted the goods. In that case, there would not have been any mistake for company to exploit.

3. Under EXW terms, the seller should make clear to the buyer that the ownership of the goods has been transferred so long as the buyer has checked and accepted the goods. It is not advisable to allow the buyer to temporarily deposit the goods at the seller's place. Luckily, the seller in this case has received the money in time, otherwise there would have been little hope to get the payment.