

◎21世纪法学系列双语教材



# 国际贸易法

UNDERSTANDING INTERNATIONAL TRADE LAW

[英] 西蒙娜·拉蒙特-布莱克 (Simone Lamont-Black) 著  
韩立余 编译



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# 国际贸易法

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## 出版说明

根据教育部《关于加强高等学校本科教学工作提高教学质量的若干意见》的精神要求，为适应我国加入WTO后的发展需要，我国高等学校法学等专业的课程安排中双语教学要逐步达到一定的比例。

为了引进对国内双语教学有帮助的优秀的国外原版教材，同时对其加以适当改造，使之真正符合我国目前双语教学的发展状况和广大师生的教学需求，我们对其中的诸多问题进行了探索。比如，在哪些课程上引进原版教材对我国的法学教学更有借鉴和学习意义，引进何种难度和多大体量的教材；又比如，如何降低纯粹的英文原版教材的学习难度，如何为广大师生提供辅助学习材料；等等。

奉献于读者面前的这套21世纪法学系列双语教材，就是基于以上考虑和探索而做的一种有益尝试。

首先，我们选择了在国际法学科、重要的民商事法学科和法学基础理论学科率先引进国外的原版教材，选择其中难度适中的国外原版教材。

其次，我们对教材的体例进行了精心的编排和设计，对较厚的原版教材进行了精心的改编。

最后，整套教材采取了英文原版书配中文辅导用书的形式：每本教材前一部分是英文原版教材（为适宜教学，作了相应删改），后一部分是我们约请国内从事双语教学的优秀教师编写的与英文原版教材相配套的中文辅导内容，设置了重点词汇解析、内容导读、案例解析等栏目。这些配套的中文辅导内容将会为学习英文原版教材的读者提供较大的帮助。

本套丛书从原版样书的审核挑选，到艰难的版权谈判过程，再到体例内容的各项设计以及作者的精心编写，每一项努力都是为了给大家奉献对我国法学双语教学真正有所裨益的好教材，希望在广大师生的关心和支持下，我们能将这套教材做得更好！

编者

2009年9月



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中国人民大学出版社约我编写一部双语教学用的导读教材。出版社提供的教材就是这本 Understanding International Trade Law。当时对该书的感觉是篇幅恰当、浅显易懂，比较适于做中国学生的双语教材。但随着对该书阅读的深入，自己竟喜欢上这本书了，情不自禁地要向中国法学学生强力推荐这本书。

相比对宪法、民法和刑法的熟悉，中国法律院校的学生普遍对国际贸易法（包括国际经济法）感到陌生，主要原因是学生在日常生活中接触不到这方面的内容。国际贸易法涉及许多国际规则，需要从跨境这一角度思考问题，这种情形要求学生改变国内法的惯性思维模式。另外，国际贸易法是一门交易法，其框架围绕交易确定，当事人的权利义务比较具体，这与民法或刑法的整体体系和逻辑结构又有不同。因此，国内教授国际贸易法或国际经济法的教师，也普遍感觉需要在教材上下工夫，协调好内容繁杂与知识体系的问题。许多教师在自己的教学实践中努力探索适合教与学的最佳方法。其目的很明确：要让学生既掌握国际贸易法的知识结构，又掌握国际贸易法的基本规则，为学生今后实际处理国际贸易涉及的法律问题奠定良好的基础。而 Understanding International Trade Law 这本教材正符合这一目的。加上中文导读，学生可以在英语和法律方面双丰收。

正如本书作者所言，该教材的目标是“用浅显的语言介绍和澄清”国际贸易法的相关问题。其读者对象是国际贸易法的初学者。教材的重点在于帮助学生掌握国际贸易法的框架以及各部分之间的内在联系，而不是提供过于详细的、深奥的、容易引起迷惑的内容。可以说，本书就是一块敲开国际贸易法这一知识宝库的敲门砖，打开这一宝库的金钥匙。一旦进入这一宝库，如何寻宝、寻何种宝物，则由寻宝者自己去决定了。为实现这一目标，作者在全书结构和逻辑性上进行了恰当的安排。

全书共包括 8 个部分和 1 个附录。核心内容是第 2 部分到第 6 部分。但其他部分也非常 important，它们为进一步应用所学知识提供了不可多得的帮助。其中，第 7 部分是案例分析训练，这一部分正是国内学生所应加强的。第 8 部分提供了进一步阅读的内容，既包括教材，又包括法规；既包括学术文献，又提供了网上资料；既包括一般学习资料，又提供了实际执业所应了解的大师级著作。而附录部分则提供了国际上常用的标准合同和相关文书，一方面提供了得之不易的珍贵资料，另一方面提供了学习借鉴的珍贵指南。可谓是一册在手，运用自如，甚至可以称其为一部国际贸易法的“葵花宝典”。

就本书的核心部分来说，作者采用了多种方式来表达相关内容。除一般论述外，作者还提供了加深印象的问题单、增强感性认识的图示、相关的经典案例，以及相关的法律文本。这些内容正是我们学习国际贸易法所不可缺少的，也为我们进一步深入阅读提供了索引和方便。在每一部分最后，作者还提供了思考题和供进一步阅读的材料。可以说，国内教材编写中使用的技巧，本书已经全包括了。这种安排也为教师和学生在规定课时之外进一步深入、拓展相关知识提供了可能性和灵活性。

Understanding International Trade Law 是一本英国教师编写的以普通法为背景的教

材。记得我早些年复印英美法系的教材或著作时，只选取最核心的部分，书前的案例表和法规表略过不印。当时这种做法的主要考虑还是费用问题，但它也说明自己对普通法的认识存在偏颇或不足。案例，尤其是英美法系中具有先例效力的案例，是确立相关规则的重要依据（authority）。教材中提供的案例，应当都是对法律有所发展的重要案例。理想的情形是，我们不仅要知其名，还要识其质，仔细阅读和体会。每一个案例，都是一篇很好的学术论文。国际贸易法课上，常有学生要求提供一些阅读材料，我总是建议其从 Lloyd's Report 上复印一个案例来读。但到底复印哪一个案例呢？本书提供了索引与指南。

本书以英国法为主，兼述其他国际规则。国际贸易法属于商法的范畴，而英国商法源远流长。无疑，本书为我们提供了非常有价值的商法内容和国际贸易法内容。同时，也应看到，书中有些内容是英国法所特有的，这些内容在使我们了解英国法的同时，也提醒我们注意到其他法域或国际规则的不同情况。而这种情形，正是国际贸易法这一跨境交易法的特点。因此，本书既是国际贸易法教材，又是英国法教材，同时也可能是一部比较法教材。我们在使用时，应联系中国的相关法律，融会贯通。

需要说明的是，正如本书作者在致谢中明确指出的：“该书所引用的法律截止到 2005 年 6 月 1 日，有些地方截止到 2005 年 10 月 1 日。书中所引用的网址在作者写作时是可以正常访问的，但可能会发生变化。”在本书即将付印之前，英文原版书的作者又向出版社重申了这一点，并要求在中文辅导中说明这一点。这充分体现了该作者的认真态度。确实，国际商会于 2006 年颁布了 UCP600，2010 年又颁布了 Incoterms2010。这些新变化都不可能在教材中得到体现。但这不影响本教材的价值。

中文辅导部分仍基本遵循原教材的章节安排。在内容上，中文辅导部分主要包括以下四个方面：第一，列出原教材中的一些专用术语和习惯表达，译成中文，方便大家阅读和记忆。第二，以教材内容概要的方式，对原教材内容进行概括，有些重要地方是全文翻译，方便大家对教材内容的理解。第三，对教材内容的理解作出提示，表达的是我自己的一些想法，以帮助和加深大家对教材内容的理解。第四，在每一章的最后，针对教材中提供的复习题，提供一些思路，而没有重复或概括原教材提出的问题。

总之，这是一部非常好的双语教学用教材。希望并相信使用该教材的教师和学生都会喜欢它。

韩立余

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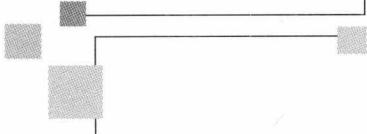
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## 英文原版书部分



Simone Schnitzer  
Newcastle  
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'May law be used to enhance our relationships and to live together in peace and harmony, rather than to abuse the weaker or less knowledgeable party.'

### Copyright acknowledgements

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Copyright permission for the reproduction of the BIMCO forms and rules in appendices O–Z was received from the Baltic and International Maritime Council, Copenhagen. Peter Holst dealt with the request in a quick and welcoming manner for which I am deeply grateful.

I have endeavoured to state the law as it stands at 1 June 2005, but was able to include some new developments up to 1 October 2005. The web pages referred to in the text were in operation at the time of writing, but may be subject to change.

*Simone Schnitzer*

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May it be used to enhance our relationships and to live together in peace and harmony rather than to spur the wiser or less knowledgeable partly.

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