

全国高等院校“十一五”规划教材
省级精品课程教材

国际贸易实务双语教程

Guoji Maoyi Shiwu Shuangyu Jiaocheng

傅龙海 丛晓明 ©主编



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国际贸易实务双语教程

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序

三十年前，我和傅龙海先生一起走出厦门大学的校门，开始了人生征途。虽然后来我们各自走的路不同，但我们的共同点都是从外贸最基层做起，从一个普通的外贸业务员到今天在各自的领域有所拓展。我作为香港高龙集团的创始人，从无到有，把一个小公司发展成集产、销、进出口贸易为一体的综合性国际贸易企业，在不大起眼的行业内名列前茅。几十年的风风雨雨过来，如果现在算是事业有所成的话，我始终觉得应归功于在厦大外贸系的四年专业学习，其中扎实的国际贸易实务技能更是不可或缺的重要部分。

由傅龙海主编的《国际贸易实务》与《国际贸易理论与实务》受到国内许多高等院校的欢迎和好评，所以他们在此基础上编写了国际贸易实务双语版教材。此次编写的教材保留了《国际贸易实务》教材原有的体系和特色，选用了目前最新的国际贸易惯例与规则，以全新的视角、全新的内容使国际贸易实务双语教材更贴近目前外贸的实际，有利于提升学生适应工作的能力，符合高校应用型、技能型、复合型人才的培养目标。本书的编者之一丛晓明博士既有在国外跨国公司长期从事国际贸易工作的经历，又有多年从事国际贸易实务的研究和教学实践。他的加盟使本教材的编写更具有理论联系实际的效果。相信这部《国际贸易实务双语教程》对于提高外贸课程的教学有一定的促进作用。

黄隆基

高龙集团有限公司 董事长

2011年1月3日

前 言

按照教育部的要求，高校需要有一定比例的双语教学，现在很多高等院校已在国际贸易实务课程教学中采用双语授课形式。但是目前国际贸易实务双语教材还是比较缺乏。由傅龙海主编的《国际贸易实务》与《国际贸易理论与实务》受到国内许多高等院校的欢迎和好评。我们在此基础上又编写了国际贸易实务双语版教材。此次编写的教材保留了《国际贸易实务》教材原有的体系，选用了目前最新的国际贸易惯例与规则，以全新的视角、全新的内容使《国际贸易实务双语教程》更贴近目前外贸的实际，有利于提升学生适应工作的能力，符合高校应用型、技能型、复合型人才的培养目标。本书的编者之一丛晓明博士既有在国外跨国公司长期从事国际贸易工作的经历，又有多年从事国际贸易实务的研究和教学实践。他的加盟使本教材的编写更具有理论联系实际的效果。

相信这本《国际贸易实务双语教程》对于提高外贸课程的教学有一定的促进作用。由于作者的水平有限，本书在编写过程中差错难免，请读者不吝指正。

编 者

2011-1-3

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导 论

I. Course Nature 本课程的性质

Practice of International Trade is a subject which studies the specific processes for international goods and services exchange as well as a comprehensive practical technology which introduces knowledge about international business for import and export. It has been recognized as a compulsory primary professional course for all trade majors nationwide.

国际贸易实务是一门主要研究国际商品及服务交换的具体过程的学科，也是一门实践性很强的综合性应用科学，涉及到国际贸易进出口业务操作的技能。凡国内经贸类专业都把本课程作为一门必修的专业基础课程。

II. Course Content 课程的主要内容

A. International Trade Terms 国际贸易术语

The first part introduces international trade terms and relevant trade customs.

本课程的第一部分主要是介绍了国际贸易术语以及有关国际贸易术语的国际贸易惯例。

Located in two different countries, the two parties of an international transaction are far away from each other. Many trading processes are involved in the international goods exchange. For example, when is the time for delivery? Which party bears the shipping? Where to deliver? Who buys the insurance? Who deals with the shipping? Which party declares the custom? Which party takes care of the loading at departing port and the unloading at destination port? When are the risks transferred? Is all cost included in the price of goods? Listing out these detail items for every transaction is time consuming and will diminish the trading efficiency thereafter. Businessmen all over the world have created a series of trade terms after long time practice in world trading field. Simple English abbreviations are then used to represent main trading conditions explicitly. Transaction is completed once the mutual parties approve those regulated conditions. The business process is greatly simplified with these trade terms.

国际贸易的买卖双方分处两国，相距遥远，买卖双方在商品买卖、交换过程中牵涉的环节很多。如：何时交货？谁负责运输？在什么地方交接？谁负责保险？谁负责安排运输？谁负责进出口报关？谁负责装运港、目的港的装卸货？风险在哪里划分？费用是

否包含在货价内？如果每宗买卖都详细列明这些交易的条件，则费时费工，影响效率。在长期的国际贸易实践中，世界各国的商人逐渐形成了一套专门用于国际贸易货物买卖的术语，用简单的英语字母缩写把主要的交易条件一目了然地表示出来，一旦对方同意即可成交，大大简化了交易程序，提高了效率，降低了交易的成本。

B. Articles of International Sales Contract 国际贸易买卖合同的条款

This book chiefly introduces the articles of international sales contract. The core content is about how to sign an international sales contract and how to implement the contract—the key processes in international business activities. To sign an international sales contract is superficially an economic behavior, and essentially a kind of legal acts of mutual parties from two different countries.

本书的最大篇幅是介绍了国际货物买卖合同的条款。贯穿本书的核心内容是围绕着这样的一条主线，即如何签订国际贸易的买卖合同，以及如何履行国际贸易的买卖合同。这也是国际贸易的商务活动的核心。对外签订国际贸易买卖合同，从表面上看，是一种经济行为，实质上是一种与国外当事人双方的法律行为。

Chapter 2 to Chapter 9 discuss the details about the main articles of international sales contract. These chapters teach students how to prepare contract articles according to relevant international trade practices as well as international trade laws and principles, like the “common law 英美法系”和“civil law 大陆法系”，the principles on cargo selling and purchasing. Due to big diverges on some important problems between the two law systems, we apply international conventions 国际公约, like 《公约》，more in recent years. In fact, most international trade contracts are signed in accordance with these relevant trade practices, law principles and international incoterms, which thereafter become the basic theoretical foundation and practical basis for people to do international business.

本书从第二章到第九章都详细探讨了有关国际贸易买卖合同的主要条款，教授给学生如何签订这些合同的条款，依据就是有关的有关国际贸易惯例，以及世界上对国际贸易有影响的法律制度及原则。如“英美法系”和“大陆法系”，有关货物买卖法的原则。因为两大法系在某些重要的问题上有较大的分歧，近年来我们应用更多的是国际公约，如《公约》，如何签订国际贸易的买卖合同，实际上我们所依据的就是这些有关的国际贸易惯例以及相关的法律原则及国际公约，了解和熟悉有关的惯例和公约以及相关的法律原则，这是我们进行国际贸易进出口业务操作最根本的理论基础和实践依据。

Chapter 10 introduces the legal procedures for concluding a contract, contract in effect, and how to perform the contract.

第十章讲述订立合同的法律步骤、合同的有效成立以及如何履行合同。

In this chapter we will introduce the detail of the legal principles and regulations of the

relevant law systems in the world and the international convention in relate to the effect of the contract.

在本章中我们要详细地介绍世界上有关的法律体系以及国际公约对合同成立的有关法律原则及规定。

Chapter 11, the performance of the contract, illuminates the various steps of import and export business and hands-on business content, such as documents checking, documents amendment, customs declaration, inspection declaration, as well as the documents completing, etc.

在第十一章合同的履行中，我们论述了进出口业务各环节以及实际操作的业务内容，如审证、改证、报关、报检以及单据的制作等。

III. International Trade Sales Contract and the Relevant International Trade Practices 国际贸易买卖合同与有关国际贸易惯例

This book is about how to sign a contract for the international trade and how to perform the contract. The core is the “contract”.

贯穿本书的一条主线是围绕着如何签订国际贸易的买卖合同及如何履行合同，这其中的核心就是“合同”。

A. Contract Concept 合同的概念

Contract, also known as a covenant, has various concept statements according to different scholars and many different regulations based on domestic or international laws. The earliest contract definition derived from Roman law. In accordance with the provisions of the Roman law: contract is consensus between the two parties on debt and creditor's right. The France Civil Code article 1101 regulates contracts to be consensus, which are mutually satisfactory, the person or persons for any other person or persons make payment, act or omission of the debt. Countries that adopt the common law consider the essence of the contract is the Promise made by mutual parties. If contrary to the promises, legal relief will be provided. The fulfillment of the promise is the obligation confirmed by the law. The basic principles of bourgeois countries: “freedom of contract, contract first.”

合同，也称为契约，但对其概念或定义，中外学者有许多不同的表述，国内外法律也有种种不同的规定。最早合同的定义来源于罗马法。按照罗马法的规定：合同为双方当事人间发生债权债务的合意。《法国民法典》第 1101 条规定合同为一种合意，(consensus)彼此合意，一人或数人对于其它一人或数人负担给付、作为或不作为的债务。采用英美法的国家则认为合同的实质在于双方当事人之间所作出的诺言 (Promise)，允诺。违反该允诺，将由法律给予救济，履行该允诺是法律所确认的义务。资产阶级国家基本原则：“契约自由，契约至上”。

From 1981 to 1987, China National People's Congress Standing Committee has adopted three major contract laws: "The Economic Contract Law" and "Technical Contract Law" and "Foreign Economic Contract Law".

我国 1981—1987 年全国人大常委会先后通过三大合同法：《经济合同法》、《技术合同法》、《涉外经济合同法》。

In September 1998, the fourth session of the Ninth China National People's Congress (NPC) agreed on the new "Contract Law". The 2nd article stating: "agreements about establishing, changing, and termination of civil rights and obligations of the partnership between the equality body of natural persons, juridical persons, and/or between other organizations.

我国 1998 年 9 月全国人大九届四次人大通过，新的《合同法》。第 2 条表述：“平等主体的自然人、法人，其它组织之间设立、变更、终止民事权利、义务关系的协议。

1. Nature of Contract 合同的性质

a. Contract is an act in civil law. The meaning expression is the element. It represents the content which leads to the appropriate legal consequences.

b. Contract is a bilateral civil legal act.

c. Contract is an agreement which will definitely produce legal consequences.

d. Contract parties' behavior of the civil law is on a voluntary and equal basis. It means a contract must be true and voluntary.

1. 合同是一种民事法律行为，合同以意思表示为要素，按意思表示内容赋予其相应的法律后果，故为民事法律行为

2. 合同是一种双方民事法律行为。

3. 合同能够产生法律后果。

4. 合同的当事人在平等、自愿的基础上产生的民事法律行为。意思表示必须真实、自愿。

2. Contract Features 合同的特征

a. Body with Equality 主体具有平等性

Article III in the General Principles of Contract Law of People's Republic of China writes, "The parties to a contract shall have equal legal status; a party shall not impose its will on the other party."

《中华人民共和国合同法》总则第三条：“合同当事人的法律地位平等，一方不得将自己的意志强加给另一方。”

b. Contractual relationship is agreeable. 合同的关系具有协议性

The contract itself is a kind of agreement between the parties.

合同本身是当事人之间的一种协议。

c. Contract Validity 合同的内容具有合法性

Article VII in the General Principles of Contract Law of People's Republic of China writes, "The performance of the contract shall base on the legal foundation, the Parties shall observe laws, administrative regulations, respect social ethics, not to disturb the social and economic order, not to cause any detriment of the public interest."

《中华人民共和国合同法》总则第七条：“当事人订立、履行合同，应当遵守法律、行政规定，尊重社会公德，不得扰乱社会经济秩序，损害社会公共利益。”

d. Contract Sanction for the Parties 合同的效力具有约束性

Article VIII in the General Principles of Contract Law of People's Republic of China writes, "The contract established by law, legally binds on the parties. The Parties shall, in accordance with the convention, fulfil their obligations, and without authorization, shall not alter or rescind the contract. Contract established by law shall be protected by law."

《中华人民共和国合同法》总则第八条：“依法成立的合同，对当事人具有法律约束力。当事人应当按照约定履行自己的义务，不得擅自变更或者解除合同。”“依法成立的合同，受法律保护。”

3. Legal Status of the Contract and Significance in Capitalist Countries 资本主义国家赋予合同的法律地位及重要意义

The France Civil Code also known as the Napoleonic Code 1840 has three parts and 2283 articles, with 1572 Articles dealing with the contract. Contract itself has an important nature: "the contracts concluded in accordance with the law, pending the conclusion of the contract between the parties have equivalent effect"; the principle was proposed in France Civil Code for the first time, then became golden rule of the civil code for main capitalist countries. China contract law also adopted this principle (the People's Republic of China Law of Contracts, Article 8).

《法国民法典》又称《拿破仑法典》1840 三编 2283 条，有 1572 条涉及契约。合同本身的重要性质：“依法订立的合同，在缔结合同的当事人之间具有相当于法律的效力”，这一原则在法国民法典里第一次提出，以后也做为主要资本主义国家民法典的金科玉律。我国合同法也采纳了这一原则（《中华人民共和国合同法》第八条）

4. The Principles a Contract Should Follow 合同应遵循的原则

In 1980, UNIDROIT established a working group, composed by experts in the field of contract law and international trade law from all the principal legal systems of the world, to draft unified law of international commercial contracts. In May 1994, the General Principles of International Commercial Contracts (Principles of International Commercial Contacts) were

adopted. The general clauses of the General Principles of International Commercial Contracts provided for the basic principles:

1980 年国际统一私法协会成立了包括世界所有主要法系在合同法和国际贸易法领域的专家组成的工作组，起草统一的国际商事合同法，1994 年 5 月通过了《国际商事合同通则》(Principles of International Commercial Contracts)，该通则的总则中规定了国际商事合同的基本原则：

a. Parties Freedom Principle (Freedom of Contract) 缔约自由原则

The General Clauses Act 1.1 stipulates: “the parties have the right to establish a contract freely, has the right to determine freely the content of the contract.” The principle of freedom of the parties is a fundamental principle of Contract Law, and is also the cornerstone of the international economic activities.

《通则》1.1 条规定：“当事人有权自由订立合同，有权自由决定该合同的内容。”缔约自由原则是合同法的基本原则，也是国际经济活动的基石。

b. Principles of Honesty 诚实信守原则

The general rule of the contracts regulates, “An effective contract has sanction to both parties. The parties only modify or terminate the contract under the terms of the contract or agreement or pursuant to the provisions of general rules.” China has consistently emphasized on following contract regulation and keeping promise, which is consistent with the principles.

《合同通则》中规定合同必须信守原则，《通则》中规定：“有效订立的合同对当事人均有约束力。当事人仅能根据合同条款或通过协议或根据通则的规定，修改或终止合同。”我国一贯重合同、守信用，与合同通则的原则是一致的。

c. Principles of Honesty and Fair Trade 诚实信用和公平交易原则

The general contract establishes the basic principles, which include the principle of good faith and fair trade concepts. Article 6 of China Contract Law states: “a party shall follow the principle of good faith in exercising their rights and obligations.”

《合同通则》确立了上述基本原则，该原则包含了诚实信用和公平交易两个概念。我国合同法第六条规定：“当事人行使权利、履行义务应当遵循诚实信用原则。”

IV. Laws and Practices Applicable to International Trade Business 国际贸易买卖合同适用的法律与惯例

To sign a sales contract, we need to base on the international trade practices, international treaties and related legislation. Therefore, to understand and be familiar with the relevant conventions, treaties and laws are significantly important for people who are dealing with international business.

如何签订买卖合同，我们所依据的就是有关的国际贸易惯例、国际条约和有关的法律。我们从事国际贸易的业务实际上就是要了解和熟悉有关的惯例、条约和法律。

A. Application of the Law 法律的适用

China Contract Law No. 126 stipulates that parties to a contract involving foreign interests can choose the applicable law to process the contract dispute except as otherwise stipulated by law. If parties to a contract involving foreign interests have not made such a choice, the most connected country laws shall apply to the contract.

我国合同法第 126 条规定：涉外合同的当事人可以选择处理合同争议所适用的法律，但法律另有规定的除外。涉外合同的当事人没有选择的，适用与合同有最密切联系国家的法律。

Such as the United Nations Convention on contracts for the international sale of goods Act hereinafter referred to as the Convention, the lesson of each section of the terms of the contract must be related to the Convention.

如《联合国国际货物销售合同公约》以下简称《公约》，本课讲述的每一个章节有关合同的条款都要涉及到该公约。

Relevant international trade practices in international trade evolved and developed on the basis of long-term practicing are the norms and standards that shall be followed by those who are engaged in the international sales of goods and economic activities, and relevant international practices are also a source of international law.

有关的国际贸易惯例是在国际贸易长期实践的基础上逐步形成和发展起来的，是人们从事国际货物买卖经济活动的行为规范和应当遵守的准则，有关的国际贸易惯例也是国际贸易法律的渊源之一。

B. The Application of International Trade Practices 国际贸易惯例的适用

International trade practices laws, is not legally mandatory, binding, but when it refers to the contract, it is then legally binding.

国际贸易惯例不是法律，没有法律强制性、约束力，但当它援引入合同时就具有法律的约束力。

1. When in conflict with the practice of the contract, the contract shall take precedence over the convention.

当合同与惯例相冲突时，合同优先于惯例。

2. People's Republic of China foreign economic contract law of the 6 Stipulates: "the participation of conclusion or People's Republic of China and the contract for the international

treaty and the provisions of the law have different People's Republic of China, the applicable provisions of the international treaty stipulates that:" while People's Republic of China declared a reserved excepted".

中华人民共和国涉外经济合同法第 6 条规定：“中华人民共和国缔结或者参加的与合同有关的国际条约同中华人民共和国法律有不同规定的，适用该国际条约的规定”同时规定：中华人民共和国声明保留的条款除外”。

Article 5: China's not otherwise covered by the law, you can choose the international practice.

第五条规定：我国法律未作规定的，可以选用国际惯例。

V. Feature of This Textbook 本教材的特点

A. Comprehensive Subject 综合性的学科

It is a comprehensive Subject. It studies the theory of international trade, trade policy and legislation, international trading law, international trade customs, finance, banking, bill law, insurance, shipping, sales law, contract law, etc. The objective of this course is to enable students to possess the practical skills for international trading business operation.

本课程是一门综合性的学科。它的内容涉及到国际贸易理论、政策法律、国际贸易法律、国际贸易惯例、金融学、银行学、票据法、保险学、国际贸易运输、国际商法中买卖法、合同法等内容。本课程旨在培养学生的国际贸易业务实际操作能力。

B. This course is a technology with strong practicality. Other than introducing international trade theories, it also emphasizes on practical skills and application.

本课程是一门实践性很强的应用科学，它不仅要有国际贸易的理论，还强调实际操作的技能和应用。

C. This course stands on the seller's position while explaining how to conduct international trade operation or how to sign a contract.

该课程讲述如何进行国际贸易操作、签订合同，都是站在卖方立场。